

# INVITATION FOR BIDS

The Board of Education of Madison-Oneida Board of Cooperative Educational Services (BOCES) will receive Bids for:

## **DIGITAL PRINTERS** **IFB 22-07-001**

for the use of said district. Bids will be received until **3:00 PM on the 26th day of July, 2022** at the **Cooperative Bidding Office** in the **District Office Building at Madison-Oneida BOCES**, 4937 Spring Rd, Verona, NY 13478 at which time and place they will be publicly opened. The Board of Education reserves the right to reject any or all Bids in whole or in part. Any Bid submitted will be binding for 45 days subsequent to date of Bid opening. Bid forms and specifications are available at the Cooperative Bidding Office in the District Office Building at Madison-Oneida BOCES from 9:00 am to 4:00 pm, Monday through Friday.

**Complete Bid forms are also available on our website at:**

**[www.moboces.org](http://www.moboces.org)**

**Click on: "Programs & Services", "Non-Instructional & Support Services", "Cooperative Bidding" and "Upcoming IFBs/RFPs"**

Madison-Oneida BOCES  
Cooperative Bidding Office  
PO Box 168, 4937 Spring Rd  
Verona, NY 13478  
(315) 361-5626  
FAX: (315) 361-5595  
Email: [co-op-bidding@moboces.org](mailto:co-op-bidding@moboces.org)

Date: **July 1, 2022**

Niki J. Maiura, District Clerk

**Madison-Oneida BOCES  
Cooperative Bidding Office  
4937 Spring Road, P.O. Box 168  
Verona, NY 13478-0168**

## INVITATION FOR BIDS

<b>IFB Number</b> 22-07-001	<b>Product/Service Requested</b> Digital Printers
<b>Contract Period</b> October 1, 2022 – September 30, 2023	
<b>Submission Deadline</b> July 26, 2022	
Note: Bids are to be mailed or delivered to the above address. <b>E-mail Bids will not be accepted.</b>	
<b>Designated Contact</b>  Iain Conley Cooperative Bidding Telephone: (315) 361-5626 E-mail: <a href="mailto:co-op-bidding@moboces.org">co-op-bidding@moboces.org</a>	<b>IFB Opening</b>  <b>Date: July 26, 2022</b>  <b>Time: 3:00 PM</b>  <b>Place: Madison-Oneida BOCES Cooperative Bidding Office 4937 Spring Road Verona, NY 13478</b>

**Your receipt of these Bid Documents does not indicate that Madison-Oneida BOCES has pre-determined your company's qualifications to receive a Contract award. Such determination will be made after the Bid opening and will be based on the evaluation of your submission compared to the specific requirements and qualifications contained in these Bid Documents.**

This procurement will result in:	<input type="checkbox"/> a Public Works Contract (Labor Law Art. 8) PRC # _____
	<input type="checkbox"/> a Building Services Contract (Labor Law Art. 9) PRC # _____
	<input checked="" type="checkbox"/> neither.
By submitting a Bid you certify that you are familiar with a Contractor's obligations under the applicable law, and that you have factored those obligations into your Bid.	

**This IFB is issued on behalf of Madison-Oneida BOCES and a number of other Participating School Districts that have entered into a cooperative bidding agreement with Madison-Oneida BOCES. This arrangement is described more fully in Paragraph 1 of Part A – Terms and Conditions of the IFB Process.**

**These Bid Documents consist of the following parts:**

- This Invitation, including Definitions
- Part A: Terms and Conditions of the IFB Process
- Part B: Standard Contract Terms and Conditions
- Part C: Terms and Conditions Specific to This Purchase
- Part D: Bid Form and Certifications

By submitting a Bid, you agree that the evaluation of your Bid, and your performance of any resulting Contract, will comply with the terms, conditions, requirements, and limitations set forth in Parts A, B, and C.

**IMPORTANT:** These provisions will constitute, or be incorporated into, the Contract between the successful Bidder and MOBOCES and its PSDs, and will **supersede** any conflicting language in a **Vendor’s preprinted invoice or service agreement.**

If you choose to submit a Bid, keep your copies of this Invitation and Parts A, B, and C for future reference, and submit the following:

- Bid Sheet,
- Certification of Non-Collusion,
- Any documentation required by Part C, and
- Any additional documentation you choose to use to support your Bid.

### **Definitions**

Terms used in these Bid Documents have the following meanings:

**Affiliate** Any individual or other legal entity, (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) that effectively controls another company in which (a) the Bidder owns more than fifty percent (50%) of the ownership; or (b) any individual or other legal entity which owns more than fifty percent (50%) of the ownership of the Bidder. In addition, if a Bidder owns less than fifty percent (50%) of the ownership of another legal entity, but directs or has the right to direct such entity’s daily operations, that entity will be an Affiliate.

**Bid** An offer submitted by a Bidder to furnish a described Product or a solution, perform services or means of achieving a practical end, at a stated price for the stated Contract term. As required by the Bid Documents, the Bid may be subject to modification through the solicitation by MOBOCES of best and final offers during the evaluation process prior to recommendation for award of the Contract.

**Bid Document** Writings by MOBOCES setting forth the scope, terms, conditions and technical specifications for a procurement of a Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference. “Bid Documents” refers to this IFB and its Parts A, B, and C.

**Bid Specification** A written description setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed Contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work.

**Bidder** Any individual or other legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) which submits a Bid in response to an IFB. The term “Bidder” shall also include the term “Offeror” and “Vendor.”

**Contract** The writing(s) which contain the agreement of MOBOCES and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law. At a minimum, the Contract resulting from an award based on this IFB includes the terms of this Invitation, Part A – Terms and Conditions of the IFB Process, Part B – Standard Contract Terms and Conditions, and Part C – Terms and Conditions Specific to This Purchase.

**Contract Award Notification** An announcement to a Bidder that a Contract has been established.

**Contractor** Any successful Bidder to whom a Contract has been awarded, whether a Contractor, licenser, licensee, lessor, lessee or any other party.

**District Superintendent** District Superintendent of Madison-Oneida BOCES.

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

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

**MOBOCES** Madison-Oneida Board of Cooperative Educational Services, in it’s role as administrator of the IFB process.

**Participating School District (PSD)** Madison-Oneida BOCES in its role as a purchaser, a school district that has entered into a Cooperative Bidding Agreement with Madison-Oneida BOCES, or Madison-Oneida BOCES acting on behalf of one or more such PSD, provided that each such PSD shall be held solely responsible for liabilities or payments due as a result of its participation.

**Procurement Record** Documentation by the PSD of the decisions made and approach taken during the procurement process and during the Contract term.

**Product** A deliverable under any Bid or Contract which may include commodities, services and/or technology.

**Proprietary** Protected by secrecy, patent, copyright or trademark against commercial competition.

**Purchase Order (PO)** A PSD's fiscal form or format that is used when making a purchase (e.g., formal written PO or other authorized instrument).

**Request For Proposals (RFP)** A type of Bid Document that is used for procurements where factors in addition to cost are considered and weighted in awarding the Contract and where the method of award is "best value," as defined by the State Finance Law.

**Request For Quotation (RFQ)** A type of Bid Document that can be used when a formal Bid opening is not required (e.g., discretionary, sole source, single source or emergency purchases).

**Responsible Bidder** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by MOBOCES.

**Responsive Bidder** A Bidder meeting the Bid Specifications or requirements prescribed in the IFB solicitation.

**Single Source** A procurement where two (2) or more Bidders can supply the required Product, and MOBOCES may award the Contract to one (1) Bidder over the other.

**Site** The location (street address) where the Product will be executed or services delivered.

**Sole Source** A procurement where only one (1) Bidder is capable of supplying the required Product.

**State** State of New York.

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

## **Part A - Terms and Conditions of the IFB Process**

By submitting a Bid in response to this IFB, you agree that you have read these Terms and Conditions, are bound by these Terms and Conditions, and have complied with them to the best of your knowledge.

**A Bidder who does not comply with these Terms and Conditions may be considered a non-responsive Bidder.**

### **1. Cooperative Contracting**

- a. The award of this Bid will create a procurement mechanism through cooperative purchasing agreements between MOBOCES and one (1) or more school districts that have entered into a cooperative bidding agreement with MOBOCES. When these Bid Documents refer to “MOBOCES”, it shall be understood as a reference to Madison-Oneida BOCES in its role as administrator of the Bid process. When these Bid and Contract Documents refer to “Participating School Districts (PSDs),” it shall be understood as a reference to Madison-Oneida BOCES as a potential purchaser, as well as to each school district that has entered into a cooperative purchasing agreement with Madison-Oneida BOCES.
- b. Each PSD will make a final determination on its participation after evaluation of Bids and/or issuance of Contracts.
- c. To the extent that any inconsistencies exist between these Bid Documents and any special terms and conditions listed for a PSD, the PSD’s terms and conditions shall prevail for that portion of the awarded Contract for that PSD.
- d. Any Contract resulting from this IFB may be extended to additional PSDs upon mutual written agreement between MOBOCES and the Contractor. MOBOCES reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.
- e. Upon request, a PSD will furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use the Contract. A list of school districts that have entered into a cooperative bidding agreement with MOBOCES is available on the MOBOCES web site ([www.moboces.org](http://www.moboces.org)). Questions regarding a client school district’s eligibility to purchase pursuant to this Contract may also be directed to the MOBOCES Cooperative Bidding Office at (315) 361-5626.

### **2. Bid Preparation**

- a. Prepare your Bid on the form included as “Part E Template” of this IFB.
- b. Type (preferred) or write your responses using indelible ink. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by MOBOCES or may be grounds for rejection of the Bid. Changes, corrections and/or use of white-out in the Bid or Bidder’s response portion of the Bid Document must be initialed by an authorized representative of the Bidder.
- c. Print the name of your company on each page of the Bid in the block provided.

- d. One (1) copy of the Bid is required, unless otherwise specified herein.
- e. All Bids must be signed by a person authorized to commit the Bidder to all of the terms and conditions set forth in these Bid Documents.
- f. If unit pricing is required by the Bid Documents, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four (4) places for each item unless otherwise specified, in the Bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of MOBOCES, such unit pricing is obviously erroneous.
- g. All offers, information, and product or service descriptions submitted in response to this IFB shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars (\$US). Any Bids submitted which do not meet these criteria will be rejected.
- h. The Bidder shall indicate in the spaces provided on the Bid form the manufacturer's name, the address where the proposed Product or Products will be produced, the catalog references or model number of the Product or Products offered and all other information requested.
- i. Bidders are cautioned to verify their Bids before submission, as amendments to Bids or requests for withdrawal of Bids received by MOBOCES after the time specified for the Bid opening, may not be considered.

### **3. Including Additional Information Or Materials**

- a. The Bidder shall submit with its Bid detailed specifications, circulars and all necessary data on the Product to be furnished.
- b. If the Product offered differs from the Bid Specifications in these Bid Documents, such differences must be explained in detail.
- c. Failure to submit any of the above data may result in rejection of the Bid. Also, extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the Bid non-responsive and may result in rejection of the Bid.
- d. Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: Product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only. Furthermore, only those extraneous terms that meet all the following requirements may be considered as having been submitted as part of the Bid:
  - i. Each proposed extraneous term (addition, deletion, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

- ii. The writing must identify the particular Bid Specification requirement (if any) that Bidder rejects or proposes to modify by inclusion of the extraneous term; and
- iii. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

No extraneous term(s), whether or not deemed “material,” shall be incorporated into a Contract or PO unless submitted in accordance with the above and MOBOCES or PSD expressly accepts each such term(s) in writing. Acceptance and/or processing of the Bid shall not constitute such written acceptance of extraneous term(s).

- e. MOBOCES reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

#### **4. Conditional Bid**

Unless the Bid Documents provide otherwise, a Bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items or Product included in the Bid Specifications. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

#### **5. Alternate Bids**

- a. Each Bidder shall make no more than one (1) offering (i.e., a single model and stock number) per item per Bid. Bids which have more than one (1) Product offering per item may not be considered.
- b. If a Bidder wishes to make more than one (1) Product offering, such offering(s) are to be made on separate sheets and are to be listed as "alternate" Bids. "Alternate" Bids are to show complete information (pricing, brand, model, stock number, etc.), and will be evaluated as separate Bids.

#### **6. Bid Delivery**

- a. All Bids are to be packaged, sealed and submitted to:

Madison-Oneida BOCES  
4937 Spring Road  
Verona, New York 13478-0168  
Attention: Iain Conley  
Cooperative Bidding  
Phone No.: (315) 361-5626  
FAX No.: (315) 361-5595  
E-Mail: [co-op-bidding@moboces.org](mailto:co-op-bidding@moboces.org)



- b. A Bid shall be placed inside an opaque envelope and sealed inside. If the Bid does not fit into the envelope, the Bid envelope should be attached to the outside of the sealed box or package with the Bid inside. If using a commercial delivery company that requires use of their shipping package or envelope, Bidder's sealed Bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the Bid is not prematurely opened.
- c. All Bids must have a label on the outside of the package or shipping container stating the following information:

**Bid Enclosed**

- Bid Name
- IFB Number
- Bid submission date and time

In the event that a Bidder fails to provide such information on the return Bid envelope or shipping material, MOBOCES reserves the right to open the shipping package or envelope to determine the proper Bid name and number, and the date and time of Bid opening. Bidder shall have no claim against MOBOCES arising from such opening and such opening shall not affect the validity of the Bid or the procurement.

Notwithstanding MOBOCES' right to open a Bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the Bid not being identified, packaged or labeled in accordance with the foregoing requirements.

- d. **E-mail Bids will not be accepted.**

**7. Late Bids**

- a. For purposes of Bid openings held and conducted by MOBOCES, a Bid must be received in such place as may be designated in the Bid Documents, at or before the date and time established in the Bid Specifications for the Bid opening.
- b. **Bidders assume all risks for timely, properly submitted deliveries.** Bidders are strongly encouraged to arrange for delivery of Bids prior to the date of the Bid opening.
- c. Any Bid received at the specified location after the time specified will be considered a late Bid. A late Bid shall not be considered for award unless: (i) no timely Bids meeting the requirements of the Bid Documents are received; and (ii) acceptance of the late Bid is in the best interests of MOBOCES and the PSDs.
- d. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of MOBOCES shall not excuse late Bid submissions. Similar types of delays, including but not limited to, bad weather, or security procedures for parking and building admittance shall not excuse late Bid submissions.

- e. Determinations relative to Bid timeliness shall be at the sole discretion of MOBOCES.

**8. Withdrawal Of Bid**

A Bid may be withdrawn after submission but before the time set for the Bid opening. A Bid will be considered withdrawn if written notice (including e-mail) of the Bidder's desire to withdraw the Bid is received by the designated contact before the time set for the Bid opening. MOBOCES reserves the right to permit a Bid to be withdrawn after Bid opening at its sole discretion, and award the Contract to the next lowest Responsible Bidder.

**9. Certification of Non-Collusion**

As required by General Municipal Law Section 103-d, each Bidder must submit with a Bid a Certification of Non-Collusion, under penalty of perjury, that to the best of its knowledge and belief:

- a. The prices in this Bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
- b. Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- c. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not submit a Bid for the purpose of restricting competition.

This Bid Document includes the required Certification form. In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the Certification as required in accordance with General Municipal Law Section 103-d.

**10. Conflict Of Terms And Conditions**

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

- a. Part C: Terms and Conditions Specific to This Purchase
- b. Part B: Standard Contract Terms and Conditions
- c. Part A: Terms and Conditions of the IFB Process
- d. Bidder's Bid and additional documents

## 11. Qualification As Responsible Bidder

- a. Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or Contracts or is deemed non-responsible.
- b. Bids will be accepted only from established manufacturers or their authorized dealers. Any dealer submitting a Bid hereby guarantees that it is an authorized dealer of the manufacturer, that the manufacturer has agreed to supply the dealer with all quantities of Products required by the dealer in fulfillment of its obligations, and that it will provide a certificate from the manufacturer acknowledging this level of support
- c. Bidder must maintain a business establishment with adequate inventories of the Products offered, and must be capable of processing and shipping large numbers of orders to various destinations.
- d. MOBOCES may require a certificate from the Bidder showing the number of years the Bidder has been active in selling the products offered and the size and location of the inventories regularly maintained.
- e. MOBOCES reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.
- f. Bidder must maintain service facilities and have trained personnel qualified to service the Product furnished at the using agency within forty eight (48) hours.
- g. Any determination of a violation of any Federal or State public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of Bid.
- h. A Bidder/Contractor must be prepared, if requested by MOBOCES, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product Bid. If MOBOCES determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that items, services or Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, MOBOCES may reject such Bid or terminate the Contract.

## 12. References

Upon request, all Bidders must provide a minimum of five (5) references including references from two (2) of the Bidder's largest customers. References shall be commercial or governmental accounts, and should demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the outlined Bid. The references shall include the reference's: name, address, contact person, telephone number, fax number, number of years Bidder has serviced the referenced account, and volume of business performed within the past three (3) years for each referenced account.

## 13. Financial Stability

If requested, Bidder must document its ability to service a contract with dollar sales volume similar to scope of this Bid through submission of financial statements documenting past sales history. The Bidder must be financially stable and able to substantiate the financial statements of its company. In addition to sales history, current financial statements may be requested and must be provided within five (5) business days. MOBOCES reserves the right to request additional documentation from the Bidder and to request reports on financial stability from independent financial rating services. MOBOCES reserves the right to reject any Bidder who does not demonstrate financial stability sufficient for the scope of this Bid.

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

## 14. Price Terms

- a. Prices quoted are to include all applicable taxes, surcharges, and fees. No add-ons to the price(s) quoted will be allowed, except as specifically stated in these Bid Documents. **Note that MOBOCES and PSDs are tax-exempt local government entities.**
- b. Prices or discounts quoted are to be firm for the entire period of the Contract. Price escalation or discount reduction will not be allowed and is specifically excluded from the terms and conditions of these Bid Documents. Price decreases or discount increases are permitted at any time.
- c. Unless otherwise specified in these Bid Documents, prices quoted shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Documents.
- d. When Bids are requested on a number of Products as a group or lot, a Bidder desiring to bid "no charge" on a Product in the group or lot must clearly indicate such. Otherwise, such Bid may be considered incomplete and be rejected, in whole or in part, at the discretion of MOBOCES.

- e. All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the Bid and such discounts shall be made available to qualifying institutions.
- f. During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract upon the same or similar terms and conditions as this Contract at a lower price, the price under this Contract, at the discretion of MOBOCES, shall be immediately reduced to the lower price.
- g. Price decreases shall take effect automatically during the Contract term and apply to POs submitted on or after:
  - i. Commercial Price List Reductions: Where Net Prices are based on a discount from Contractor's list prices, the date Contractor lowers its pricing to its customers generally or to similarly situated government customers during the Contract term; or
  - ii. Special Offers/Promotions Generally: Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net price otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; or
  - iii. Special Offers/Promotions to PSDs: Contractor may offer PSDs, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the foregoing paragraph (ii).
- h. As specified in the Bid Documents and Contract, a Contractor may be solicited at the time of issuance of a PO for best and final pricing for the Product or service to be delivered to the PSD. Contractors are encouraged to reduce their pricing upon receipt of such request.

## **15. Quantity To Be Purchased**

- a. All quantities listed are estimates. Best efforts have been made to list quantities that are reasonably expected to be purchased, depending upon finances at the time of award.
- b. MOBOCES reserves the right, at any time prior to the award of a specific quantity Contract, to alter in good faith the quantities listed in the Bid Documents. In the event such right is exercised, the lowest responsible Bidder meeting Bid Specifications will be advised of the revised quantities and afforded an opportunity to extend or reduce its Bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its Bid price may result in the rejection of its Bid and the award of such Contract to the lowest Responsible Bidder who accepts the revised qualifications.

- c. MOBOCES reserves the right to negotiate lower pricing, or to advertise for Bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a Contract Products exceeding the listed quantity.

**16. Delivery And Set-Up Terms**

- a. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a PO.
- b. Product is required as soon as possible and guaranteed delivery may be considered in making award.
- c. Delivery shall be made in accordance with instructions on PO from each PSD. If there is a perceived discrepancy between the PO and the terms and conditions of the Contract resulting from this IFB, it is the Contractor's obligation to seek clarification from the PSD and, if applicable, from the MOBOCES Cooperative Bidding Office.
- d. **Price shall include:**
  - Unloading, moving to point of use, uncrating, assembling, adjusting and leaving ready to operate to the full extent of its design capabilities, with final connections, if any, to be made by others, or
  - Unloading, moving to point of use, uncrating, assembling, complete installation, adjusting, connecting all services and leaving ready to operate to the full extent of its design capabilities.
  - Not applicable
- e. The PSD is responsible for bringing all services to within six feet (6') of an installation site.
- f. Additional fees may be charged when delivery to point of use is not possible via dock, any other door, stairway or elevator. If special rigging is required, the purchaser shall pay the additional costs. Such costs shall be prepaid and added to the invoice.
- g. If a PSD requires inside delivery, such as to an upper floor, it must clearly indicate on PO that inside delivery is required and the specific location where inside delivery is required to be made (using terminology such as "Inside Delivery To Room \_\_\_\_\_ Located On \_\_\_\_\_ Floor," etc.) A PSD may be charged additional inside delivery costs when inside delivery is required; but may not be charged for delivery to building location since price is FOB destination; and, the PSD must be informed of the additional cost prior to delivery and agree to the additional charge. NOTE: If it is determined by MOBOCES that the Contractor is charging excessive amounts for inside delivery, MOBOCES may seek reimbursement for such amounts on behalf of PSDs, may remove the Contractor from the list of eligible Bidders, and may cancel the Contract.

- h. Contractor shall furnish the PSD with written acknowledgement of the shipping date at least two (2) weeks prior to shipment. Failure to comply may be cause for the initiation of Contract default proceedings.
- i. If shipment will not be made within the guaranteed delivery time, the Contractor is required to notify the PSD in writing at least two (2) weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the material will be shipped. Should the delay be not acceptable to the PSD, appropriate Contract default proceedings may be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

**17. Taxes**

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

**18. Prevailing Wage Rates – Public Works And Building Services Contracts**

- a. The IFB identifies whether this procurement is classified as a Public Works Contract or a Building Services Contract.
- b. If this procurement is classified as a Public Works Contract or a Building Services Contract, each Bidder should be sure they are familiar with the additional requirements set forth in Article 8 or Article 9 of the Labor Law and incorporated into the Contract resulting from this Bid, as set forth in Paragraph 14 of Part B – Standard Contract Terms and Conditions.
- c. If applicable, a copy of the prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bids that fail to comply with this requirement will be disqualified.

**19. Protection Of Bidder’s Confidential/Trade Secret Information**

- a. Records of MOBOCES are subject to public inspection pursuant to the New York State Freedom of Information Law (FOIL). During the evaluation process, the content of each Bid will be held in confidence and details of any Bid will not be revealed except as may be required under the Freedom of Information Law or other State law.

- b. The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception is effective both during and after the evaluation process.
  - i. If the Bid contains any such trade secret or other confidential or proprietary information, it must be accompanied in the Bid with a written request to MOBOCES to not disclose such information.
  - ii. Such request must state with particularity the reasons why the information should not be available for disclosure and must be provided at the time of submission of the Bid. Notations in the header, footer or watermark of the Bid Document will not be considered sufficient to constitute a request for non-disclosure of trade secret or other confidential or proprietary information.
  - iii. Where a Freedom of Information request is made for trademark or other confidential or proprietary information, MOBOCES reserves the right to determine upon written notice to the Bidder whether such information qualifies for the exemption for disclosure under the law. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.
- c. Notwithstanding the above, where a Bid tabulation is prepared and Bids publicly opened, such Bid tabulation shall be available upon request.

## **20. Product References**

- a. “Or Equal”: In all Bid Specifications the words “or equal” are understood to apply where a copyrighted, brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. MOBOCES’ decision as to acceptance of the Product as equal shall be final.
- b. Discrepancies in References: In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

## **21. Site Inspection**

- a. It is recommended that each Bidder prior to the Bid opening familiarize itself with facilities at PSDs, and in particular with the area where the Product is to be installed, as the Bidder is fully responsible for the product meeting the solicitation and installation requirements. Bidders may make an appointment to visit the site.



- b. Where a site inspection is required by the Bid Documents, Bidder shall be required to inspect the site, including environmental or other conditions for pre-existing deficiencies that may affect the installed Product, equipment, or environment or services to be provided and, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. Particular attention should be given to structural and electrical changes required for proper installation. All inquiries regarding such conditions shall be made in writing.
- c. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed.
- d. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly complete the delivery and installation of the required Product or provide the requested service.

## 22. Samples

- a. Standard Samples: Bid Documents may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by MOBOCES and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.
- b. Bidder Supplied Samples: MOBOCES reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract.
  - i. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of Bid or cancellation of the Contract.
  - ii. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned.
  - iii. Where applicable, samples must be properly labeled with the appropriate Bid or Contract reference.
  - iv. A sample may be held by MOBOCES during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct MOBOCES as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- c. Enhanced samples: When an approved sample exceeds the minimum Bid Specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, MOBOCES may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- d. Conformance with sample(s): Submission of a sample (whether or not such sample is tested by, or for, MOBOCES) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Bid Documents. If in the judgment of MOBOCES the sample or Product submitted is not in accordance with the Bid Specifications or testing requirements prescribed in the Bid Documents, MOBOCES may reject the Bid. If an award has been made, MOBOCES may cancel the Contract at the expense of the Contractor.
- e. Testing: All samples are subject to tests in the manner and place designated by MOBOCES, either prior to or after Contract award. Unless otherwise stated in the Bid Documents, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fails to meet Contract requirements may be at the expense of the Contractor.
- f. Requests for samples by PSDs: A PSD may request a sample from the Contractor. The Contractor may decline to supply a sample, but, in such a case, the PSD may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

## **23. Drawings**

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

**24. Products Manufactured In Public Institutions**

Bids offering Products that are manufactured or produced in public institutions will be rejected.

**25. Remanufactured, Recycled, Recyclable Or Recovered Materials**

- a. Consistent with Product specifications included in these Bid Documents and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled, recyclable or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications.
- b. 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 IFB.
- c. Items with recycled, recyclable, recovered, refurbished or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

**26. User Accessibility And Accommodation**

All PSDs are required to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidders are therefore required to identify and offer any software or hardware Products they manufacture or adapt which may be used or adapted for use by visually, hearing, or any other physically impaired individuals. It is not mandatory for Bidders to have this equipment in order to receive an award, unless otherwise required by the Bid Specifications in these Bid Documents, but it is necessary to identify any such equipment they have which falls into the above category.

**27. EPA Energy Star Program**

The Federal EPA, in cooperation with manufacturers, continues a program to foster the manufacture of energy efficient equipment. MOBOCES fully supports this effort and may require Products offered to comply with EPA Energy Star guidelines for energy efficiency. MOBOCES may discontinue use of and/or delete from Contract selected Products as mandated by any energy legislation that is enacted during the term of this Contract. The Contractor shall have no recourse with any PSD for such discontinuance/deletion.

**28. Warranties (Also See Part B, Paragraph 49)**

- a. Normal wear and tear items shall be warranted in accordance with manufacturer's standard warranty.
- b. At time of Bid opening, Product offered must meet all requirements of this IFB including full commercial/retail availability. Product literature and specifications must also be available.

- c. On Products with condensing units, the guarantee on such units shall be extended for an additional four (4) years.
- d. Where accessories are to be supplied, they must be compatible with the rest of the Product.

**29. Internet Websites**

MOBOCES prefers and recommends that successful Bidders maintain a website for PSDs to access directly to view offered Products. This website will be listed under the Contractor information. The website will be the responsibility of the Contractor to maintain and keep updated. Changes in Product line or pricing must be approved by MOBOCES in accordance with any terms included in the Contract resulting from this Bid prior to addition to the website. Hard copy catalog and price lists, either in paper format or electronic format, must be available to all end users who either do not have web access or prefer the optional format.

**30. Price Sheets And Catalogs**

- a. After award, Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their Bid, including any changes (additions, deletions, etc.) pursuant to the Contract, to PSDs that request them. Catalogs and price lists provided must reflect all Products excluded from the resultant Contract either through the omission of those portions or by obvious indications within the catalogs and price lists.
- b. Catalogs and price lists may be furnished 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 catalogs and price lists.

**31. Instruction Of Personnel**

Within five (5) business days of delivery of Product, the Contractor shall provide instruction by qualified personnel sufficient to ensure that the Product is operated and operator maintained so as to perform to the full extent of its design capabilities. A PSD shall designate its personnel who are to receive instruction.

**32. Instruction Manuals**

Simultaneous with delivery, the Contractor(s) shall furnish to the PSD a complete instruction manual for the Product and for each component supplied. The manual shall include complete instructions for unpacking, inspecting, installing, adjusting, aligning, and operating the Product, together with layout and interconnection diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

**33. Option To Procure From Centralized Contracting**

MOBOCES reserves, for itself and each PSD, the right to purchase from available State or County Contracts, provided that the same or similar item(s) can be purchased at the same or similar terms, and at a lower price. PSDs 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.

**34. Emergency Purchasing**

- a. MOBOCES reserves for itself and each PSD the right to obtain the Products or services subject to this IFB from any source, including but not limited to this Contract, as MOBOCES or PSD determines will meet the needs of an emergency situation requiring the prompt and immediate delivery of Products or services, as declared by MOBOCES or PSD.
- b. Contractor shall not be entitled to any claim or lost profits for Products or services procured from other sources pursuant to this paragraph.

**35. Preferred Source Procurement**

- a. Section 162 of the State Finance Law requires that MOBOCES and all PSDs afford first priority to the Products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such Products/services meet the form, function and utility required by these Bid Documents. Therefore, one (1) or more of these suppliers may be designated as a "Preferred Source" and as a result, we may issue no award for the Products/services affected. In the Contract Award Notification, PSDs will be reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the preferred sources.

**36. Bid Opening**

Bids may, as applicable, be opened publicly. MOBOCES reserves the right at any time to postpone or cancel a scheduled Bid opening.

**37. Method Of Award (General Commodities)**

- a. Award shall be made to the lowest Responsive and Responsible Bidder.
- b. The award shall be made on a line-by-line, category, or entire Bid basis, whichever is in the best interest of MOBOCES and PSDs.
- c. Bids with minor incompletions will be given consideration subject to subsequent and final determination by MOBOCES as to acceptability. A Bid which is five percent (5%) or less incomplete, will be considered as having "minor" incompletions.

- d. MOBOCES reserves the right to reject an obviously unbalanced Bid or to make "no award" on individual listings or sub-items if individual Bid prices are deemed to be unbalanced or excessive or if an error in the IFB becomes evident. In such case, ranking and evaluation of Bids, and award(s) may be made on remaining items. The exercise of all options reserved in this paragraph shall be at MOBOCES's sole discretion.

**38. Method Of Award (Cafeteria Commodities)**

Award is intended to be made on the specific Products identified. MOBOCES may (but is not required to) award on a different/alternate Product than what was originally specified (e.g., two percent (2%) milk offered instead of homogenized milk specified, etc.) if the total for item with such different/alternate Product is seven percent (7%) less than an otherwise complying Bid which offered all the specific products identified for the item or no compliant Bids have been received, or for another reason, and such offering is agreeable to the PSD.

**39. Bid Evaluation**

- a. MOBOCES reserves the right to accept or reject any and all Bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if MOBOCES determines the best interests of MOBOCES and PSDs will be served.
- b. MOBOCES, in its sole discretion, may accept or reject illegible, incomplete or vague Bids and this decision shall be final.

**40. Bidder Non-Responsible Or Non-Compliant**

Where the apparent low Bidder is determined to be a non-responsible Bidder, or MOBOCES permits the apparent low Bidder to withdraw after the opening of the Bids, MOBOCES reserves the right to make an award to the next lowest Bidder without rebidding.

**41. Clarifications/Revisions**

MOBOCES reserves the right to seek clarifications, request Bid revisions, or to request any information deemed necessary for proper evaluation of Bids from all Bidders deemed to be eligible for Contract award, before making an award. Failure to provide requested information may result in rejection of the Bid.

**42. Prompt Payment Discounts**

While prompt payment discounts will not be considered in determining the low Bid, MOBOCES may consider any prompt payment discount in resolving Bids which are otherwise tied. However, any notation indicating that the price is net, (e.g., net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges may render the Bid non-responsive and may be cause for its rejection.

**43. Equivalent Or Identical Bids**

In the event two (2) Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two (2) or more Bidders submit substantially equivalent Bids as to pricing or other factors, the decision of MOBOCES to award a Contract to one (1) or more of such Bidders shall be final.

**44. Offers Firm For Designated Period**

- a. MOBOCES reserves the right to make awards within sixty (60) days after the date of the Bid opening or such other period of time as set forth in the Bid Documents, during which period, Bids must remain firm and cannot be withdrawn.
- b. Where an award is not made within the sixty (60) day period or other time specified in the Bid Documents, and subject to Section 2-205 of the Uniform Commercial Code where applicable, the Bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to MOBOCES written notice of the withdrawal of its Bid. Any Bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of MOBOCES, be accepted or rejected.

**45. Electronic Bid Opening Results**

After Bids are awarded, MOBOCES posts Bid prices on the MOBOCES web page ([www.moboces.org](http://www.moboces.org)). The web page makes available Bid tabulations (i.e., photocopies of price pages or spreadsheets) received by MOBOCES for scheduled Bid openings. It is anticipated that this information will be available online within five (5) business days after the Bid award.

**46. Release Of Bid Evaluation Materials**

Requests concerning the evaluation of Bids may be submitted under the Freedom of Information Law. Information, other than statistical or factual tabulations or data such as the Bid tabulation, shall only be released as required by law after Contract award. Bid tabulations are not maintained for all procurements. Names of Bidders may be disclosed after Bid opening upon request. Written requests should be directed to MOBOCES.

**47. Advertising Results**

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

**48. Expenses Prior To Contract Execution**

MOBOCES and any PSDs are not liable for any costs incurred by a Vendor, Bidder or Contractor in the preparation and production of a Bid or for any work performed prior to Contract execution.

**49. Surety Bond**

- a. Upon the request of MOBOCES, a Bidder/Contractor shall, within fifteen (15) days of the request and at its own cost and expense, obtain and maintain in full force sixty (60) days after Contract expiration:
  - i. An irrevocable documentary letter of credit with a sound and reputable bank authorized to do business in the State of New York, or
  - ii. A performance bond signed by a surety company authorized to do business in the State of New York, or
  - iii. A payment bond signed by a surety company authorized to do business in the State of New York,

in the amount of five percent (5%) of the Contract award for the faithful performance of the Contract.

- b. The letter of credit, performance bond, payment bond, etc., shall name as beneficiary MOBOCES and other PSDs, and may be invoked to the benefit of MOBOCES or a PSD, upon delivery of a certified statement to the issuing bank or surety company that the Contractor has failed to perform pursuant to the terms and conditions of this Contract.
- c. If required by Part C – Terms and Conditions Specific to This Purchase, or requested by MOBOCES, the Bidder shall submit with its Bid a letter from its bank or surety company stating that the letter of credit or bond will be provided if being considered for a Contract or in the event of a Contract. The letter of credit or bond shall be provided on a yearly basis for each year, or portion, of the Contract.

**50. Diesel Emission Reduction Act Of 2006**

Pursuant to §19-0323 of the N.Y. Environmental Conservation Law (“NYECL”) it is a requirement that heavy duty diesel vehicles in excess of eight thousand five hundred (8,500) pounds use the best available retrofit technology (“BART”) and operate exclusively on 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 a PSD.

By submitting a Bid, you certify and warrant that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this Contract, will comply with the Bid Specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this law will be the responsibility of the Bidder.



**51. Dispute Resolution**

It is the policy of MOBOCES to provide Vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to MOBOCES Bid solicitations or Contract awards. MOBOCES encourages Vendors to seek resolution of disputes through consultation with MOBOCES staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes.

**52. Inquiries About The Bid Process Or Specifications**

- a. All inquiries concerning this IFB will be addressed to the following MOBOCES designated contact:

Madison-Oneida BOCES  
4937 Spring Road  
Verona, New York 13478-0168  
Attention: Iain Conley  
Cooperative Bidding  
Phone No.: (315) 361-5626  
Fax No.: (315) 361-5595  
E-mail: [co-op-bidding@moboces.org](mailto:co-op-bidding@moboces.org)

- b. All questions should be submitted in writing no later than ten (10) days prior to the Bid opening date on the IFB, citing the particular Bid Document section and paragraph number.
- c. The prospective Bidder should notify the designated contact of any term, condition, etc., that precludes the Vendor from submitting a compliant, responsive Bid.
- d. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the Contract are to be resolved prior to the submission of a Bid.
- e. Answers to all questions of a substantive nature will be given to all prospective Bidders in the form of a formal addendum which will become part of the ensuing Contract.

## **Part B - Standard Contract Terms and Conditions**

### **1. Applicability**

These terms and conditions are expressly incorporated in and applicable to the resulting procurement Contracts let by the MOBOCES Cooperative Bidding Office, or let by any other PSD where incorporated by reference in its Bid Documents. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

### **2. Governing Law**

This procurement, the resulting Contract, and any POs issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.

### **3. Executory Clause**

This Contract shall be deemed executory only to the extent of monies appropriated and available to a PSD for the purpose of this Contract, and no liability shall be incurred by MOBOCES or any PSD beyond the amount of such monies. The Contract is not a general obligation of MOBOCES or any PSD. Neither the full faith and credit nor the taxing power of MOBOCES or any PSD is pledged to the payment of any amount due or to become due under this Contract. It is understood that neither this Contract nor any representation by any public employee or officer creates any legal or moral obligation to appropriate or to make monies available for the purpose of this Contract. In the event that any previously PSD fails to appropriate and make monies available for the purpose of this Contract, the terms of this Contract shall continue in full force and effect with respect to MOBOCES and each other PSD.

### **4. Non-Assignment Clause**

This Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the PSD and any attempts to assign the Contract without the PSD's written consent are null and void. The Contractor may, however, assign its right to receive payment without the PSD's prior written consent unless this Contract concerns Certificates of Participation issued pursuant to Section 109-b of the General Municipal Law.

### **5. Workers' Compensation Benefits**

The Contractor warrants that for the duration of the Contract it shall maintain coverage for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law, and failure to do so shall render this Contract void and of no force and effect.

**6. Non-Discrimination Requirements**

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

**7. International Boycott Prohibition**

If this is a Public Work Contract covered by Article 8 of the Labor Law and exceeds five thousand dollars (\$5,000) in value, the Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or Affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid Affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Contract's execution, such Contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify MOBOCES within five (5) business days of such conviction, determination, or disposition of appeal.

**8. Prohibition On Purchase Of Tropical Hardwoods**

The Contractor certifies and warrants that all wood products to be used under this Contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the PSD. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the PSD.

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

## **9. Set-Off Rights**

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

## **10. Records**

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

**11. Identifying Information And Privacy Notification**

Federal Employer Identification Number and/or Federal Social Security Number. All invoices or POs submitted for payment for the sale of goods or services or the lease of real or personal property to a PSD must include the payee's Tax Identification Number, i.e., the seller's or lessor's Identification Number. The Number is either the payee's Federal Employer Identification Number or Federal Social Security Number, or both such Numbers when the payee has both such Numbers. Failure to include this Number or Numbers may delay payment. Where the payee does not have such Number or Numbers, the payee, on the invoice or PO, must give the reason or reasons why the payee does not have such Number or Numbers.

The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the PSD is mandatory. The principal purpose for which the information is collected is to enable the PSD to issue appropriate year-end tax forms.

**12. Contractor's Preservation Of Confidential Information**

- (a) Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, student educational information, or commercial proprietary information in the possession of MOBOCES or any PSD hereunder or received from another third party, will not be divulged to any third parties. Contractor further agrees to take appropriate steps as to its agents, Subcontractors, officers, distributors, resellers or employees regarding the obligations arising under this clause to insure such confidentiality.
- (b) Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the PSD, or otherwise obtained under the Freedom of Information Act or other applicable New York State laws and regulations.
- (c) This warranty shall survive termination of this Contract.

**13. Public Works And Building Services Contracts – Wages & Hours**

If any portion of work being Bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply:

- (a) "Public Works" and "Building Services" - Definitions

- (i) **Public Works:** Labor Law Article 8 applies to Contracts for public improvement in which laborers, workers or mechanics are employed on a “public works” project (distinguished from public “procurement” or “service” Contracts). The wage and hours provision applies to any work performed by Contractor or Subcontractors
  
- (ii) **Building Services:** Labor Law Article 9 applies to Contracts for building service work over one thousand five hundred dollars (\$1,500) with a public agency, that: (A) involve the care or maintenance of an existing building, or (B) involve the transportation of office furniture or equipment to or from such building, or (C) involve the transportation and delivery of fossil fuel to such building, or (D) the principal purpose of which is to furnish services through use of building service employees.

(b) **Prevailing Wage Rate Applicable to Bid Submissions**

A copy of the applicable prevailing wage rates to be paid or provided are annexed to the Bid Documents. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Bidders may not submit Bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. Bids that fail to comply with this requirement will be disqualified.

(c) **Wage Rate Payments/Changes During Contract Term**

The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects resulting from this Contract, subject to the provisions of the Labor Law. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

(d) **Public Posting & Certified Payroll Records**

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

- (ii) **Payroll Records:** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works Contracts over twenty five thousand dollars (\$25,000) where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services Contracts, such records must be kept at the work site while work is being performed.
- (iii) **Submission of Certified Payroll Transcripts for Public Works Contracts Only:** Contractors and Subcontractors on public works projects must submit monthly payroll transcripts to the PSD that has prepared or directs the preparation of the plans and Bid Specifications for a public works project, as set forth in the Bid Specifications. Upon mutual agreement of the Contractor and the PSD, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: (A) the Contractor/Subcontractor retains the original records; and, (B) an original signed letter by a duly authorized individual of the Contractor or Subcontractor attesting to the truth and accuracy of the records accompanies the disk. This provision does not apply to Article 9 of the Labor Law building services Contracts.
- (iv) **Records Retention:** Contractors and Subcontractors must preserve such certified transcripts for a period of three (3) years from the date of completion of work on the awarded Contract.
- (e) **Day's Labor**

No laborers, workmen or mechanics in the employ of the Contractor, Subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight (8) hours in any one (1) calendar day or more than five (5) calendar days in any one (1) week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

#### **14. Late Payment**

Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 3-a of the General Municipal Law.

**15. No Arbitration**

Disputes involving this Contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**16. Service Of Process**

In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the PSD's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the PSD, in writing, of each and every change of address to which service of process can be made. Service by the PSD to the last known address shall be sufficient.

**17. Mercury Content**

Any Product supplied to a PSD that contains mercury shall be labelled in compliance with Article 27, Title 21 of the State Environmental Conservation Law.

**18. Contract Creation/Execution**

Subject to and upon receipt of all required approvals as set forth in the Bid Specifications, a Contract shall be deemed executed and created with the successful Bidder(s), upon MOBOCES's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notification; and either (ii) a fully executed Contract; or (iii) a properly-authorized PO.

**19. Participation In Centralized Contracts**

MOBOCES and PSDs retain the right to purchase items from New York State Contracts or County Contracts, provided the same or similar items can be purchased for better terms or conditions.

**20. Modification Of Contract Terms**

The terms and conditions set forth in the Contract shall govern all transactions by PSD(S) under this Contract. The Contract may only be modified or amended upon mutual written agreement of MOBOCES and Contractor. The Contractor may, however, offer PSDs more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to MOBOCES and the PSDs by the Contractor at the time of such offer.



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

**21. Scope Changes**

MOBOCES reserves the right, unilaterally, to require changes, by written order altering, adding to or deducting from the Bid Specifications, such changes to be within the general scope of the Contract. MOBOCES may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

**22. Estimated/Specific Quantity Contracts**

Estimated quantity Contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any quantity(s) is implied or given. Purchases by PSDs from Contracts for services and technology are voluntary.

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

**23. Purchase Orders (POs)**

Unless otherwise authorized in writing by MOBOCES, no Product is to be delivered or furnished by Contractor until transmittal of an official PO from the PSD. Unless terminated or cancelled by the issuing PSD, POs shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All POs issued pursuant this Contract must bear the appropriate Bid or Contract number. As deemed necessary, the PSD may confirm pricing and other Product information with the Contractor prior to placement of the PO. MOBOCES reserves the right, for itself and all PSDs to require any other information from the Contractor which MOBOCES or a PSD deems necessary in order to complete any PO placed under the Contract. Unless otherwise specified, all POs will be placed by PSDs directly with the Contractor and any discrepancy between the terms stated on the Vendor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the PSD. Should a PSD add written terms and conditions to the PO that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the PO within five (5) business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the PSD, or fulfill the PO. Notwithstanding the above, the PSDs reserve the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

#### **24. Product Delivery**

Delivery must be made as ordered to the address specified on the PO and in accordance with the terms of the Contract or Contract Award Notification. Unless otherwise specified in the Bid Documents, delivery shall be made within fourteen (14) calendar days after receipt of a PO by the Contractor. The decision of MOBOCES as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Po shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify MOBOCES and the PSD, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the PSD. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in MOBOCES's discretion, the Contract.

#### **25. Weekend And Holiday Deliveries**

Unless otherwise specified in the Bid Specifications or by a PSD, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the PSD shall govern.

#### **26. Shipping/Receipt Of Product**

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

- (b) **Shipping Charges:** Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the PSD. Unless otherwise agreed, items purchased at a price F.O.B. Shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the PSD’s payment of transportation charges. Contractor shall be responsible for ensuring that the Bill of Lading states “charges prepaid” for all shipments.
- (c) **Receipt of Product:** The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the PSD. Any losses resulting from the Contractor’s failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

**27. Title And Risk Of Loss**

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

**28. Re-Weighing Product**

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

**29. Product Substitution**

In the event a specified manufacturer’s Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by MOBOCES to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the PSDs. Unless otherwise specified, any substitution of Product prior to MOBOCES’s written approval may be cause for cancellation of Contract.

**30. Rejected Product**

When Product is rejected, it must be removed by the Contractor from the premises of the PSD within ten (10) calendar days of notification of rejection by the PSD. Upon notification of rejection, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten (10) calendar days of notification shall be regarded as abandoned by the Contractor, and the PSD shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the PSD for any and all costs and expenses incurred in storage or effecting removal or disposition after the ten (10) calendar day period.

**31. Installation**

Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the appearance of the Product or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site. Work shall be performed to cause the least inconvenience to the PSDs and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

**32. Repaired Or Replaced Parts/Components**

Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product under the Contract, the repaired, replaced or substituted Products shall be subject to all terms and conditions for new parts and components set forth in the Contract including Warranties, as set forth in the Additional Warranties Clause herein. Replaced or repaired Product or parts and components of such Product shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new Product standards may be permitted by MOBOCES or PSD. Before installation, all proposed substitutes for the original manufacturer's installed parts or components must be approved by the PSD. The part or component shall be equal to or of better quality than the original part or component being replaced.

**33. On-Site Storage**

With the written approval of the PSD, materials, equipment or supplies may be stored at the PSD's site at the Contractor's sole risk.

**34. Employees, Subcontractors & Agents**

All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Documents, whichever is more restrictive, and must comply with all security and administrative requirements of the PSD. The right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with PSD's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. MOBOCES reserves for itself and each PSD the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

**35. Assignment**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract without the prior written consent of MOBOCES or PSD (as applicable). Failure to obtain consent to assignment from the PSD shall revoke and annul such Contract. Notwithstanding the foregoing, MOBOCES and PSDs shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignment(s) with MOBOCES and the PSD. MOBOCES reserves the right to reject any proposed assignee in its discretion.

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

**36. Subcontractors And Suppliers**

MOBOCES reserves for itself and each PSD the right to reject any proposed Subcontractor or supplier for bona fide business reasons, which may include, but are not limited to: they are on the Department of Labor's list of companies with which New York State cannot do business; MOBOCES determines that the company is not qualified; MOBOCES determines that the company is not responsible; or, the company has previously provided unsatisfactory work or services.

**37. Performance/Bid Bond**

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

**38. Suspension Of Work**

MOBOCES, in its sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of a PSD. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze or reduction on spending, declaration of emergency, contract compliance issues or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any POs, and shall comply with the suspension order. Activity may resume at such time as MOBOCES issues a formal written notice authorizing a resumption of performance under the Contract.

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

**39. Termination Of Contract**

- (a) For Cause: If a material breach by the Contractor remains uncured for more than thirty (30) days or other specified period after written notice to the Contractor, or if the Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or if there is a determination that Contractor is non-responsible, then the Contract or PO may be terminated by MOBOCES or PSD at the Contractor's expense. Such termination shall be upon written notice to the Contractor. In such event, MOBOCES or PSD may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.
- (b) For Convenience: This Contract may be terminated at any time by MOBOCES or a PSD for convenience upon sixty (60) days written notice or other specified period without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or PO that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the PSD shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and provide any outstanding deliverables.

**40. Savings/Force Majeure**

A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. Force Majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or MOBOCES. This paragraph shall govern when Contract non-performance is attributable to a Force Majeure occurrence and the exercise of reasonable diligence could not have prevented the non-performance. Contractor shall provide MOBOCES with written notice of any Force Majeure occurrence as soon as the delay is known.

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

Notwithstanding the above, at the discretion of MOBOCES where the delay or failure will significantly impair the value of the Contract to MOBOCES or to PSDs, MOBOCES may:

- (a) Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to PSDs with respect to Product subjected to allocation; and/or
- (b) Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantities without penalty or liability to MOBOCES; or
- (c) Terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, MOBOCES reserves the right, in its sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

#### **41. Contract Billings**

Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each PSD, together with complete and accurate supporting documentation as required by the PSD in order to receive payment. Billings for PSDs must contain all information required by the Contract. Each PSD shall render payment for its own purchases under this Contract, in accordance with its ordinary procedures and practices.

Submission of an invoice and payment thereof shall not preclude MOBOCES from demanding reimbursement or a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of MOBOCES or any PSD, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by MOBOCES or PSD and in a format commercially available from the Contractor. MOBOCES may direct the Contractor to provide the information to the State Comptroller or to any PSD.

#### **42. Default – Participating School District**

- (a) **Breach of PSD:** A PSD's breach shall not be deemed a breach of the Contract, rather it shall be deemed a breach of the PSD's performance under the terms and conditions of the Contract.
- (b) **Failure to Make Payment:** In the event a PSD fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within sixty (60) days of such delivery and acceptance, the Contractor may, upon ten (10) days advance written notice to both MOBOCES and the PSD's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.
- (c) **Notice of Breach:** Notwithstanding the foregoing, the Contractor shall, at least ten (10) days prior to declaring a breach of Contract by any PSD, by certified or registered mail, notify both MOBOCES and the purchasing official of the breaching PSD of the specific facts, circumstances and grounds upon which a breach will be declared.
- (d) It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service a PSD shall constitute a breach of its Contract and the PSD may thereafter seek any remedy available at law or equity.

#### **43. Remedies For Breach**

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

- (a) **Cover/Substitute Performance:** In the event of Contractor's material breach, the PSD may, with or without formally bidding: (i) Purchase from other sources; or (ii) If the PSD is unsuccessful after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement Product of equal or comparable quality, the PSD may acquire acceptable replacement Product of lesser or greater quality. Such purchases may, in the discretion of the PSD, be deducted from the Contract quantity and payments due Contractor.
- (b) **Withhold Payment:** In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the PSD. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.



- (c) **Bankruptcy:** In the event that the Contractor files a petition under the U.S. Bankruptcy Code during the term of this Contract, PSD may, at their discretion, make application to exercise its right to set-off against monies due the debtor or, under the Doctrine of Recoupment, credit the PSD the amounts owed by the Contractor arising out of the same transactions.
  
- (d) **Reimbursement of Costs Incurred:** The Contractor agrees to reimburse the PSD promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the PSD in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the ordering PSD may rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the PSD promptly by the Contractor or deducted by the PSD from payments due or to become due the Contractor on the same or another transaction.

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

#### **44. Assignment Of Claim**

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

#### **45. Toxic Substances**

Each Contractor furnishing a toxic substance as defined by Section 875 of the Labor Law, shall provide such PSD with no less than two (2) copies of a Material Safety Data Sheet (MSDS), which sheet shall include for each such substance the information outlined in Section 876 of the Labor Law. Before any chemical product is used or applied on or in any building, a copy of the product label and MSDS must be provided to and approved by the PSD representative.

**46. Independent Contractor**

It is understood and agreed that the legal status of the Contractor, its agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the PSD, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the PSD with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

**47. Security**

Contractor warrants, covenants and represents that it will comply fully with all security procedures of the PSDs in performance of the Contract including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**48. Cooperation With Third Parties**

The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the PSD, as necessary to ensure delivery of Product or coordination of performance of services.

**49. Additional Warranties**

Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to PSDs. Contractor hereby warrants and represents:

- (a) **Product Performance:** Contractor warrants and represents that Products delivered pursuant to this Contract conform to the manufacturer's specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.
- (b) **Title and Ownership Warranty:** Contractor warrants, represents and conveys (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver perpetual license rights to any Products transferred to PSD under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the PSD for any loss, damages or actions arising from a breach of said warranty without limitation.

- (c) **Contractor Compliance:** Contractor represents and warrants to pay, at its sole expense, for all applicable permits, licenses, tariffs, tolls and fees to give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of MOBOCES that it meets or exceeds all requirements of the Bid/Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for worker's compensation, and shall provide such proof as required by MOBOCES. Failure to do so may constitute grounds for MOBOCES to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by MOBOCES.
- (d) **Product Warranty:** Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock Product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.
- (e) **Project Warranty Period:** Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project Warranty Period"). During the Project Warranty Period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the PSD. Contractor shall extend the Project Warranty Period for individual component(s), or for the system as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the system requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees ("extended warranty").
- (f) **Replacement Parts Warranty:** If during the regular or extended warranty period product defects are discovered, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the PSD shall in no event be liable or responsible therefor.

Any part or component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the PSD and guaranteed for the greater of: a) the warranty period under paragraph (e) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

- (g) **Virus Warranty:** The Contractor represents and warrants that Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee’s site.
- (i) **Workmanship Warranty:** Contractor warrants that all components or deliverables specified and furnished by or through Contractor under this Contract meet the completion criteria set forth in these Bid Documents and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.
- (j) **Survival of Warranties:** All warranties contained in this Contract shall survive the termination of this Contract.
- (k) **Remanufactured Components:** 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.

**50. Legal Compliance**

Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of MOBOCES that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits and licensing, and shall provide such proof as may be required by MOBOCES. Failure to comply or failure to provide proof may constitute grounds for MOBOCES to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by MOBOCES.

**51. Indemnification**

Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully indemnify and save harmless the PSDs from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of a PSD.

**52. Indemnification Relating To Third Party Rights**

The Contractor will also indemnify and hold the PSDs harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs that may be finally assessed against the PSDs in any action for infringement of a United States Letter Patent, or of any copyright, trademark, trade secret or other third party proprietary right except to the extent such claims arise from the PSDs' gross negligence or willful misconduct, provided that MOBOCES shall give Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor.

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

The foregoing provisions as to protection from third party rights shall not apply to any infringement occasioned by modification by the PSD of any Product without Contractor's approval.

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

**53. Limitation Of Liability**

Except as otherwise set forth in the Indemnification Paragraphs above, the limit of liability shall be as follows:

- (a) Contractor's liability for any claim, loss or liability arising out of, or connected with the Products and services provided, and whether based upon default, or other liability such as breach of Contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the PO for the Products and services, or parts thereof forming the basis of the PSD's claim, (said amount not to exceed a total of twelve (12) months charges payable under the applicable PO) or (ii) one million dollars (\$1,000,000), whichever is greater.
- (b) A PSD may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the PSD unless Contractor at the time of the presentation of claim shall demonstrate to the PSD's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.
- (c) Notwithstanding the above, neither the Contractor nor the PSD shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the PSD, the Contractor, or by others.

**54. Insurance**

Contractor shall secure and maintain insurance coverage as specified in the Bid Documents and shall promptly provide documentation of specified coverages to a PSD. If specified, the Contractor may be required to add a PSD as an additional insured.

## Part C - Terms and Conditions Specific to This Purchase

<b>IFB Number</b> <b>22-07-001</b>	<b>Product/Service Requested</b> Digital Printers
<b>Contract Period</b> <b>October 1, 2022 – September 30, 2023</b>	
<b>Submission Deadline</b> <b>July 26, 2022</b>  Note: Bids are to be mailed or delivered to the above address. <b>E-mail Bids will not be accepted.</b>	
<b>Designated Contact</b>  Iain Conley Cooperative Bidding Telephone: (315) 361-5626 E-mail: <a href="mailto:co-op-bidding@moboces.org">co-op-bidding@moboces.org</a>	<b>IFB Opening</b> <b>Date: July 26, 2022</b>  <b>Time: 3:00 PM</b>  <b>Place: Cooperative Bidding Office</b> <b>Madison-Oneida BOCES</b> <b>4937 Spring Road</b> <b>Verona, NY 13478</b>

IFB 22-07-001

BIDS TO BE OPENED:

TIME: 3:00 PM  
DATE: July 26, 2022  
PLACE: Madison-Oneida BOCES  
District Office Building  
4937 Spring Road  
P.O. Box 168  
Verona, NY 13478-0168

NAME OF BIDDER: \_\_\_\_\_

**BID FORM  
AND  
SPECIFICATIONS  
FOR**

**Digital Printers**

**TWO COPIES OF THE PROPOSAL/BID MUST BE SUBMITTED  
ONE ELECTRONIC COPY PERMISSIBLE**

Use This Form Only  
No Other Form Shall Be Accepted



## General Requirements

1. **Vendor Technical Qualifications:**

The vendor shall be formally approved by the manufacturers whose systems they are supplying (if they are not the manufacturer themselves). **Documentation of such approval including customer service satisfaction ratings shall be attached.** In order to provide the Mohawk Regional Information Center with the fastest possible repairs and the best support, only vendors with such approval will be considered. The vendor's service center **shall** be located within a 150-mile radius of the Madison-Oneida BOCES, located in Verona, New York.

2. **Warranty Requirements:**

All warranty repair windows will be Monday – Friday and shall be referred to as a 5 x 72 schedule. 5 x 72 means 5 days a week with a turnaround time of no more than 3 days for on-site warranty repairs. All warranty items will be handled through a central pickup and delivery site located at the Madison-Oneida BOCES in Verona, New York.

Warranty shall include all components of a printer (including rollers, fusers, etc.) and any vendor installed components as required by the specifications of this bid. Any cost incurred during the warranty period of any item supplied by a winning bidder as a result of this bid shall be the responsibility of the vendor and shall incur **no cost to BOCES**. Warranty examples include but are not limited to all shipping, packaging, pick-up and delivery of warranty repair items including items for which no problem can be found.

During the warranty period, warranty service above and beyond the manufacturer's warranty shall **also** include software reloads to original shipped image load if needed or deemed necessary by BOCES at **no cost to BOCES**. The vendor shall allow individual component replacement and/or warranty without return of an entire unit by special arrangement per BOCES request.

3. **Vendor Performance Requirements:**

All education or other manufacturer's rebates on all products will be made payable to BOCES **within twenty (20) days of availability** to the vendor for all products ordered by BOCES.

BOCES shall be allowed to send returns to the vendor without cost to BOCES within sixty (60) days after receipt of delivery, after which no more than a 10% re-stocking or other return fee may be charged.

4. **Delivery Requirements:**

All hardware and software shall be delivered within thirty (30) **calendar** days of receipt of purchase order by the vendor. Partial shipment of orders of any kind will not be accepted unless specifically requested by the Mohawk Regional Information Center. All deliveries shall be complete, fully integrated, and operational as specified on the Mohawk Regional Information Center purchase order.

All orders shall be shipped and installed at no charge, regardless of size, weight and dollar value, to the identified client district within thirty (30) days of order receipt unless specifically instructed otherwise. Each purchase order shall have only one “Ship To” address. **Separate purchase orders to the same “Ship To” address may not be combined in one package** although they may be combined in one shipment. All purchase order numbers and other identifying data to be supplied by BOCES **shall be clearly marked on the outside of all packages**. The vendor shall be required to label all equipment with the Mohawk Regional Information Center inventory tags to be supplied by BOCES. For each shipment, the vendor shall also supply an inventory list of equipment with the description, serial numbers and the corresponding RIC tag.

5. **Confidentiality Obligation:**

The Vendor acknowledges that in the course of fulfilling its warranty service obligations the Vendor’s employees, agents, or other representatives may observe confidential business information of the BOCES or school district, information regarding employees of the BOCES or school district, and information about students classified as confidential educational records under federal law (Family Educational Records and Privacy Act). By submitting a Bid, the Vendor warrants that it, its employees, agents, and other representatives will keep all such information confidential, and will not divulge, reveal, repeat, report, or use, for any purpose, any information belonging to the BOCES or school district which they observe in the course of fulfilling their obligations under this agreement. Vendor further warrants that no employee, agent, or other representative will be assigned to perform warranty service at BOCES or a school district without having first been instructed regarding this Confidentiality Obligation.

If equipment is returned for any reason, vendor agrees to wipe the hard drive clean of any and all data maintained on the equipment hard drive before removing equipment from the premises and to provide proof of such action in writing, such as a letter, certificate, etc. to BOCES.

This Confidentiality Obligation shall survive the termination of the underlying contract awarded to the successful Bidder.

It shall not be a violation of this Confidentiality Obligation for the Vendor to disclose information belonging to BOCES or a school district in response to a lawfully issued judicial subpoena, provided that the Vendor provides BOCES or the school district with prompt notice and a copy of the subpoena prior to responding.

## Technical Requirements

### **Hardware Qualifications:**

1. Forty-eight (48) month warranty of all equipment with unlimited copies. Warranty includes:
  - a. All parts and labor.
  - b. Guaranteed one-hour call back on all service calls.
  - c. Guaranteed on-site response time of four (4) hours or less, preferably with commonly utilized parts.
  - d. Option to continue warranty of equipment in the forty-ninth (49) month with the vendor under the same terms and conditions at a price of at least \_\_\_\_\_%\* off the vendor's then-current monthly maintenance fee for each specific machine. (\*This is a required field.)
2. Vendor will house all supplies and dispense to customer as arranged.
3. Vendor will assign a specific in-house person to act as a customer service representative to the Madison-Oneida BOCES and its clients.
4. The vendor will replace a printer with a record of an inordinate number of service calls as judged by the customer within forty-eight (48) month warranty period ("lemon clause").
5. The vendor will provide 100% money back in year one if a customer wishes to replace one machine with any different model awarded on the bid. This applies to unopened, opened but not used and used devices and is exclusive of supplies.
6. The vendor will provide the equipment and services for purchase by the Madison-Oneida BOCES at prices stated **or less** through **September 30, 2023**.
7. All equipment and supplies pricing does not include buy-out of existing equipment now owned by Madison-Oneida BOCES or its clients.
8. All printers need to be networkable.
9. Duplexing capabilities are required on all digital printers.
10. Print management software must be built in with the printers to track usage and manage the networked print devices (firmware updates, printer alerts to help desk, etc.).
11. Data security software, such as encryption and/or overwriting, must be built into the printer and included in the bid price. If this option is not available for the make and model, the vendor agrees to wipe the hard drive clean of any and all data maintained on the equipment hard drive before removing equipment from the premises and to provide proof of such action in writing, such as a letter, certificate, etc. to BOCES.

12. If over the life of the awarded bid (through **September 30, 2023**), if any awarded models become end-of-life and are no longer available after the award date and before any subsequent bid process for similar equipment, the vendor may provide substitute replacement models, provided that the vendor provides the Mohawk Regional Information Center with the substitute model number and associated model specifications.

**Supplies:**

13. Definition – Supplies include everything needed for each machine except paper, electricity and the outlet that the machine plugs into.
14. All supply pricing is fixed for forty-eight (48) months following the month of machine installation. The vendor is to provide supplies that are reasonably consumed by the Participating District within the forty-eight (48) month period.
15. The vendor will accept supply orders directly from the Participating District.
16. It is the vendor’s responsibility to provide the Mohawk Regional Information Center with a record of supplies ordered and provided to the Participating Districts once they are delivered.
17. In keeping with the theme of equity and fairness, we ask that each vendor provide supply cost pricing in two ways for choice by each of the BOCES clients:
- a. As a per copy cost per machine model for unlimited copies over the forty-eight (48) months after equipment installation.
  - b. As a fixed price for unlimited copies over the forty-eight (48) months after equipment installation.
18. If awarded, and if requested by MORIC, the vendor agrees to retrieve and buy back all equipment in month forty-nine (49) for a minimum of \_\_\_\_\_%\* of the original purchase price, without the forty-eight (48) month warranty component. **(\*This is a required field.)**
19. If equipment is returned for any reason (including but not limited to repair, lemon clause, and end-of-contract), vendor agrees to wipe the hard drive clean of any and all data maintained on the equipment hard drive **before** removing equipment from the Participating District’s premises. The vendor also agrees to provide proof of such action in writing, such as a letter, certificate, etc. to BOCES.

**Delivery:**

20. Equipment – The vendor will be required to schedule delivery of units with the MORIC staff. MORIC staff will coordinate with districts.
21. Supplies – The vendor will deliver supplies directly to Participating Districts.

**Training:**

22. Training – The awarded vendors are required to provide training to MORIC staff on the functionality of the equipment awarded in the bid.

**Special Instructions**

1. The Madison-Oneida BOCES is seeking bids for the outright purchase of multi-functional digital printers (**not desktop printers**) - and related technical support services. **All costs for hardware and services, regardless of when they are provided, SHALL be included in the purchase bid prices.** This bid is for purchases made by the Mohawk Regional Information Center at Madison-Oneida Board of Cooperative Educational Services and its Cooperative Bidding Consortium and its component school districts. Up to 54 New York State school districts and BOCES within the Mohawk Regional Information Center region may participate subject to approval by their respective governing boards. For a list of eligible districts, please visit [https://www.moric.org/about\\_us/districts\\_BOCES](https://www.moric.org/about_us/districts_BOCES).
2. Bids shall include prices for the entire list of hardware, software and services as outlined in **each section** of the bid response sheets. Incomplete bids for the entire list of terms, hardware and software contained in **any single section** may cause rejection of a vendor's bid for **that section**. **All bid responses shall be prepared on the enclosed worksheets identified as Part E Template. No other forms shall be accepted.**
3. Equipment shall be new and shall be delivered in original equipment manufacturer's (OEM) packaging or the equivalent.
4. Estimates as to quantities of use are not available. This bid provides purchasing options for districts, but does not commit them to any particular purchasing option. Accordingly, a prediction cannot be made as to which vendor(s) or product(s) districts would choose to use.
5. All bids **SHALL** be submitted with three (3) references citing where the vendor has successfully performed similar hardware, software or integration services. Vendors shall meet the requirements as defined in **Attachment A** and submit proof of these requirements.

Each reference **shall** include the following information:

- a. Enterprise name
  - b. Contact name and title
  - c. Address
  - d. Telephone
6. The Madison-Oneida BOCES reserves the right to accept or reject any and all bids in whole or in part, or to accept any bid, in the judgment of the Board of Education, is in the best interest of the BOCES. The Board of Education reserves the right to purchase items

on State or other contracts to which it is entitled if such items can be obtained on the same terms, conditions, specifications and at a lower price.

7. **TWO COPIES of the bid shall be submitted** in a sealed opaque envelope clearly marked with:

- **Bidder’s company name and address**
- **Title and number of bid**
- **Date and time of bid opening**

If the bid is submitted by Federal Express / UPS / USPS Priority Mail or other means of special delivery, the above described properly marked and sealed opaque envelope shall be placed inside the Fed Ex or other special mailing envelope or package.

8. The Madison-Oneida BOCES is exempt from state, federal and excise tax.
9. Delivery of the equipment is to be arranged and paid for by the vendor with equipment to be drop shipped to the identified district.
10. Purchase orders for equipment will be issued after a formal bid award, which is scheduled to take place on the date of the BOCES Board meeting that follows the bid final submission date. Each purchase order shall have only one “Ship To” address. **Separate purchase orders to the same “Ship To” address may not be combined in one package, although they may be combined in one shipment.**
11. Refer all inquiries, in writing, to:

Iain Conley  
Madison-Oneida BOCES  
Cooperative Bidding Office  
Fax: 315-361-5595  
Email: [co-op-bidding@moboces.org](mailto:co-op-bidding@moboces.org)

**No telephone calls will be accepted.**

12. Sealed bids will be received until the date and time stated in the Invitation for Bids and should be addressed to the attention of:

Iain Conley  
Madison-Oneida BOCES  
Cooperative Bidding Office  
PO Box 168  
4937 Spring Rd  
Verona, NY 13478

**References**

**1. Customer Reference #1**

Enterprise Name

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Contact Name and Title

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Address

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Telephone

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**2. Customer Reference #2**

Enterprise Name

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Contact Name and Title

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Address

---

Telephone

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**3. Customer Reference #3**

Enterprise Name

---

Contact Name and Title

---

Address

---

Telephone

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Thank you for your interest in working with us to provide digital printers to our clients. Vendors participating in our program are asked to provide price information in the format per the attached forms, and are also required to sign off on the following items. All fields are required. No assumptions will be made after bid submissions are opened. Failure to complete all fields may result in rejection of the entire bid.

**Specification**

**Will your company provide as part of equipment purchase price?**

- |   |  |
|---|--|
| 1. Forty-eight (48) month warranty of all equipment with unlimited copies.<br>Warranty includes: <ul style="list-style-type: none"><li>a. All parts and labor</li><li>b. Guaranteed one hour call back on all service calls</li><li>c. Guaranteed on-site response time of four (4) hours or less</li><li>d. Option to continue warranty of equipment in the forty-ninth (49) month with the vendor under the same terms and conditions at a price of at least ____% off the vendor's then current monthly maintenance fee for each specific machine.</li></ul> | 1. Yes ___ No ___<br><br>_____<br>Authorized Signature |
| 2. Vendor will house all supplies and dispense to customer as arranged.   | 2. Yes ___ No ___<br><br>_____<br>Authorized Signature |
| 3. Vendor will assign a specific in-house person to act as a customer service representative to the Madison-Oneida BOCES and its clients.   | 3. Yes ___ No ___<br><br>_____<br>Authorized Signature |
| 4. The vendor will replace a printer with a record of an inordinate number of service calls as judged by the customer within the forty-eight (48) month warranty period (“lemon clause”).   | 4. Yes ___ No ___<br><br>_____<br>Authorized Signature |

- |   |  |
|---|--|
| <p>5. The vendor will provide 100% money back in year one if a customer wishes to replace one machine with any different model provided by the vendor.</p>  | <p>5. Yes _____ No _____</p> <p>_____</p> <p>Authorized Signature</p>  |
| <p>6. If requested, the vendor agrees to buy back all equipment in month forty-nine (49) for a minimum of _____% of the original purchase price, <b>without</b> the forty-eight (48)-month warranty component.</p>  | <p>6. Authorized % _____</p> <p>_____</p>  |
| <p>7. The vendor will provide the equipment and services for purchase by the Madison-Oneida BOCES at prices stated <b>or less</b> through <b>September 30, 2023</b>.</p>  | <p>7. Yes _____ No _____</p> <p>_____</p> <p>Authorized Signature</p>  |
| <p>8. Is the data security software included on ALL models included in your bid response?</p> <p>If not, the vendor agrees to wipe the hard drive prior to the equipment being removed from the premises and proof of such action will be provided to Madison-Oneida BOCES.</p> | <p>8. Yes _____ No _____</p> <p>Yes _____ No _____</p> <p>_____</p> <p>Authorized Signature</p>                |
| <p>9. All equipment and supplies pricing does not include buy out of existing equipment now leased by Madison-Oneida BOCES or its clients.</p> <p><b>Supplies</b></p>   | <p>9. Acknowledgement that the vendor understands the exclusion.</p> <p>_____</p> <p>Authorized Signature</p>  |
| <p>10. <u>Definition</u>: Supplies include everything needed for each machine except: paper, electricity, and the outlet that the machine plugs into.</p>   | <p>10. Acknowledgement that the vendor understands the exclusion.</p> <p>_____</p> <p>Authorized Signature</p> |
| <p>11. All supply pricing is fixed for forty-eight (48) months following the month of machine installation.</p>   | <p>11. Yes _____ No _____</p> <p>_____</p> <p>Authorized Signature</p>   |

12. In keeping with the theme of equity and fairness, we ask that each vendor provide supply cost pricing in two ways for choice by each of the BOCES clients.

- a. As a per copy cost per machine model
- b. As a fixed price for unlimited copies over the forty-eight (48) months after equipment installation.

12. Yes\_\_\_\_\_ No\_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

- a. \_\_\_\_\_ per copy
- b. Price provided on attached price sheet

## Part D - Bid Form And Certifications

**The Bid must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Invitation For Bids, Part A (Terms and Conditions of the IFB Process, Part B (Standard Contract Terms and Conditions), and Part C (Terms and Conditions Specific to This Purchase), and that all information provided is complete, true and accurate.**

Legal Business Name of Company:		Bidder's Federal Tax Identification No.:	
D/B/A - Doing Business As (if applicable):			
Street	City	State	Zip
County			
<b>Bidder's Signature:</b>		Printed or Typed Name:	
Title:		Date:	
Phone : (    ) -            ext (    )	Toll Free Phone: (    ) -            ext (    )		
Fax    : (    ) -            ext (    )	Toll Free Fax    : (    ) -            ext (    )		
E-mail Address:		Company Web Site:	

### Certification of Non-Collusion

By submission of this Bid, each Bidder, and each person signing on behalf of the Bidder, certifies under penalty of perjury that to the best of it's and their knowledge and belief:

- (1) The prices in this Bid have been arrived at independently and without collusion, consultation, communication or agreement relating to such prices with any other Bidder or with any competitor; and
- (2) Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by this Bidder prior to opening of the Bid, directly or indirectly, to any other Bidder or any competitor; and
- (3) No attempt has been made or will be made by this Bidder to induce any other person, partnership, or corporation to submit or not to submit a Bid for the purpose of restricting competition.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Please Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

[    ] As a Bidder, I cannot make the above certification, but have furnished a signed statement with my Bid that sets forth in detail the reasons I cannot sign the certification.

**Please Complete The Remainder Of The Bid Form**

**CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT**

As a result of the Iran Divestment Act of 2012 (the “Act”), Chapter 1 of the 2012 Laws of New York, a new provision has been added to State Finance Law (SFL) § 165-a and New York General Municipal Law § 103-g, both effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list of “persons” who are engaged in “investment activities in Iran” (both are defined terms in the law) (the “Prohibited Entities List”). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than one hundred twenty (120) days after the Act’s effective date at which time it will be posted on the OGS website.

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each Bidder/Contractor, any person signing on behalf of any Bidder/Contractor and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the OGS website, that to the best of its knowledge and belief, that each Bidder/Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to SFL § 165-a(3)(b).

Additionally, Bidder/Contractor is advised that once the Prohibited Entities List is posted on the OGS Website, any Bidder/Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the District receive information that a Bidder/Contractor is in violation of the above-referenced certification, the District will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he/she/it has ceased engagement in the investment which is in violation of the Act within ninety (90) days after the determination of such violation, then the District shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the Bidder/Contractor in default.

The District reserves the right to reject any bid or request for assignment for a Bidder/Contractor that appears on the Prohibited Entities List prior to the award of a contract and to pursue a responsibility review with respect to any Bidder/Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

I, \_\_\_\_\_, hereby certifies under the penalty of perjury that I am the  
\_\_\_\_\_ of the \_\_\_\_\_

Corporation and that neither the Bidder/Contractor nor any proposed subcontractor is identified on the Prohibited Entities List.

\_\_\_\_\_  
SIGNED

Certification of Sexual Harassment Prevention In the Workplace Policy and  
Annual Sexual Harassment Prevention Training of All Employees Pursuant to  
NYS Finance Law §139-1

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, 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 Section Two Hundred One-g of the Labor Law (NY Labor Law §201-g).

A bid shall not be considered for award nor shall any award be made to a bidder who has not complied with the certification requirement of NYS Finance Law

§139-1(1); provided, however, that if the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor.

Any bid hereafter made by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where such bid contains the statement required by NYS Finance Law §139-1(1), 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 corporation

Certified under penalty of perjury:

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

My signature affirms that before submitting this Bid I was fully informed as to the extent and character of the service, supplies, materials, or equipment required, and certifies that I can and will furnish the service, supplies, materials, or equipment as proposed in this Bid, and in compliance with all of the specifications and conditions stated in the Bid Documents.

Signature

Please Print Name

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Company or Organization

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Date:

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**Digital Printers IFB 22-07-001**  
**Opens July 26, 2022 at 3:00 PM**  
**Bid Form**  
**Digital Printers - Black and White**  
**Contract Effective October 1, 2022 - September 30, 2023**

VENDOR: \_\_\_\_\_

*Model	*Speed (ppm)	*Avg Monthly Volume	*Purchase Price (Includes 4 yr Warranty)	*Supplies (4-year supply)		Special Feature Add-Ons	*Price
				*Price per Copy	*Fixed Price, Unlimited Copies, 48 months		
Low (ie: Less than 20 ppm)							
Mid (ie: 20-39 ppm)							
High (ie: 40-60 ppm)							
High+ (ie: Greater than 60 ppm)							

\* Denotes a required field. No assumptions will be made after bid submissions are opened. Failure to complete required columns may result in rejection of the entire bid.



**Digital Printers IFB 22-07-001**  
**Opens July 26, 2022 at 3:00 PM**  
**Bid Form**  
**Digital Printers - Color**  
**Contract Effective October 1, 2022 - September 30, 2023**

VENDOR: \_\_\_\_\_

*Model	*Speed (ppm)	*Avg Monthly Volume	*Purchase Price (Includes 4 yr Warranty)	*Supplies (4-year supply)		Special Feature Add-Ons	*Price
				*Price per Copy	*Fixed Price, Unlimited Copies, 48 months		
Low (ie: Less than 20 ppm)							
Mid (ie: 20-39 ppm)							
High (ie: 40-60 ppm)							
High+ (ie: Greater than 60 ppm)							

\* Denotes a required field. No assumptions will be made after bid submissions are opened. Failure to complete required columns may result in rejection of the entire bid.