



**Office of General Services  
Procurement Services**

**PIGGYBACK CONTRACT FOR  
SMALL PACKAGE DELIVERY SERVICES  
BY AND BETWEEN  
NEW YORK STATE OFFICE OF GENERAL SERVICES  
AND  
FEDEX CORPORATE SERVICES, INC. AS AGENT FOR FEDERAL EXPRESS  
CORPORATION AND FEDEX GROUND PACKAGE SYSTEM, INC.**

**New York State Contract #**

**PS69557**

**Master Contract #**

**MA454**

**THIS CONTRACT** for establishment of a "piggyback" contract under the NASPO/State of Utah Master Agreement is made between the People of the State of New York, acting by and through the Commissioner of General Services (hereinafter "State" or "OGS") whose principal place of business is the 36th Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242, pursuant to authority granted under New York State Finance Law §163(10)(e), and FedEx Corporate Services, Inc. (hereinafter "Contractor" or "Vendor" or "Offerer") as agent for Federal Express Corporation and FedEx Ground Package System, Inc., with its principal place of business at 900 7<sup>th</sup> Street, NW, Suite 550, Washington, DC, 20001. OGS and Contractor are hereby individually referred to as a "Party" and collectively referred to as "Parties."

**Whereas**, in accordance with New York State Finance Law §163(10)(e), the Commissioner of OGS (hereinafter "Commissioner") may authorize purchases required by New York State agencies or other authorized purchasers by approving the use of a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states (hereinafter "Issuing Agency");

**Whereas**, The State Of Utah, Division of Purchasing and General Purposes in conjunction with NASPO ValuePoint has recently let a certain Contract Number MA454 with Contractor for Small Package Delivery Services (hereinafter "Master Contract");

**Whereas**, OGS is a member of NASPO ValuePoint and is therefore authorized to utilize NASPO ValuePoint contracts;

**Whereas**, OGS Procurement Services (hereinafter "OGS" or Procurement Services"), on behalf of the Commissioner, finds it necessary and desirable to enter into a contract (hereinafter "Piggyback Contract" or "Contract"), with Contractor for the purchase of specified products or services under the terms and conditions established pursuant to the Master Contract; and

**Whereas**, OGS provided notification of its intention to enter into this Piggyback Contract with Contractor by placing a notice in the March 01, 2022 edition of the New York State Contract Reporter.

**Therefore**, by completing and signing this Piggyback Contract, Contractor is willing and able to enter into a contract and authorizes OGS to process the Piggyback Contract and provide notification to Authorized Users regarding the availability of this Piggyback Contract.

## 1. INTRODUCTION

### 1.1 OVERVIEW AND SCOPE

This document sets forth the terms and conditions governing acquisitions under this Piggyback Contract for use by Authorized Users. All the terms, conditions, covenants, and representations contained herein and in the NASPO Master Contract, except as modified by this Piggyback Contract, are hereby incorporated by reference and deemed to be a part of this Piggyback Contract as if fully set forth at length herein. The terms and conditions of this Piggyback Contract shall supersede any conflicting terms and conditions set forth in the Master Contract.

Contractor is an agent for Federal Express Corporation and FedEx Ground Package System, Inc., the entities providing the services under the Contract in accordance with the terms of the Contract. Contractor has authority to sign contracts on behalf of those entities and executed this Contract pursuant to such authority on behalf of Federal Express Corporation and FedEx Ground Package System, Inc.

The Master Contract is expressly amended as noted in Section 2.1, *CONTRACT DOCUMENTS AND CONFLICT OF TERMS*, below.

### 1.2 ESTIMATED QUANTITIES

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

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

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

By execution of this Piggyback Contract Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of this Piggyback Contract could vary substantially from any estimates provided in this Piggyback Contract or previous purchases.

### 1.3 NYS COMPTROLLER APPROVAL

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

## 2. CONTRACT TERMS AND CONDITIONS

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

## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

### 2.1 CONTRACT DOCUMENTS AND CONFLICT OF TERMS

This Piggyback Contract shall incorporate the following appendices as if set forth herein at length. Only documents expressly enumerated below shall be deemed a part of this Piggyback Contract, and references contained in those documents to additional Contractor documents not enumerated below shall be of no force and effect. Conflicts between these documents shall be resolved in the following descending order of precedence.

- A. Appendix A – *Standard Clauses for NYS Contracts* (October 2019);
- B. Piggyback Contract (This Document);
- C. Appendix B – *General Specifications* (April 2016);
- D. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (July 2021);
- E. Attachment 1 – *Insurance Requirements*; and
- F. NASPO/ValuePoint Master Contract MA454, with the exception of ATTACHMENT F, *FedEx Response to Solicitation*, to the Master Contract which is deemed deleted in its entirety and not incorporated in this Piggyback Contract.

### 2.2 APPENDIX B MODIFICATIONS

Paragraph (b) of Section 43, Termination, is deleted in its entirety and replaced with the following language:

**For Convenience** This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. This Contract may be terminated by the Contractor upon 120 days' notice to the Commissioner if Contractor does not achieve a satisfactory resolution through completion of the OGS Dispute Resolution Procedures as provided in this Appendix B. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

### 2.3 CONTRACT TERM AND EXTENSIONS

The term of this Piggyback Contract shall begin on the date of approval by OSC, pursuant to the MOU referenced above in Section 1.3 *NYS Comptroller Approval* and shall end upon the expiration or termination of the Master Contract, subject to OGS' right to terminate this Piggyback Contract as provided herein. The term of this Piggyback Contract shall be deemed extended whenever the term of the Master Contract is extended, without the need for the Parties to execute an extension or amendment to this Piggyback Contract.

Notwithstanding the above paragraph, OGS reserves the right, upon written agreement with Contractor, to renew the New York State Contract under the same terms and conditions in accordance with Appendix B *Contract Term - Extension*.

### 2.4 PRICE

The price for Product shall either be at the agreed-upon discounts and service rates listed in Attachment C of the Master Contract MA454 – *FedEx Rates, NASPO ValuePoint eff. Nov 28, 2021 Single National Carrier Pricing - MBG*, or at a price that is more advantageous to the Authorized User.

### 2.5 CATALOGS AND PRICE SHEETS

Catalogs and price lists shall be provided in accordance with the terms of the Master Contract. Upon request, Contractor shall also assist Authorized Users in the use of such documents.

### 2.6 ORDERING

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

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation

## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### 2.7 PURCHASING CARD ORDERS

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

### 2.8 CONTRACT ADMINISTRATION

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

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website. Contractor will endeavor to notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

### 2.9 CONTRACTOR'S INSURANCE REQUIREMENTS

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 1 – *Insurance Requirements*.

### 2.10 REPORT OF CONTRACT USAGE

Contractor shall make ad hoc reporting available to OGS through an online portal. Sales information will include total sales to Authorized Users of this Contract by Contractor, and all authorized Subcontractors, or Third Parties, if any, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

Contractors shall use commercially reasonable efforts to specify if any Subcontractors or Third Parties are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), NYS Small Business Enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

Contractor shall also make the report or the information therein available to NASPO ValuePoint upon request in accordance with the Master Contract.

**Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to OGS using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Contract must be reported as quarterly totals by Authorized User. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

**Detailed Sales Data.** Contractor shall also report detailed sales data by: (1) state; (2) Purchasing Entity name; (3) total dollars domestic; (4) total dollars international; (5) total dollars ground; (6) total dollars home delivery; (7) total quarter dollars; (8) rebate amount; (9) total packages domestic; (10) total packages international; (11) total packages ground; (12) total packages home delivery; (13) total quarter packages.

Reports are due on a quarterly basis and must be received by the designated OGS Contract Manager no later than thirty (30) days after the end of the reporting period. Reports must be delivered to OGS electronically through a designated portal or other method as determined by the OGS and the Contractor. Detailed sales data reports must include sales information for all sales under this Contract.

These reports and defined attributes represent all required summary sales and detailed sales data reporting required by the state of New York or unique users participating in the agreement. If additional reporting is requested, it must be mutually

## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

agreed upon by both parties and the Contractor reserves the right deny any request based on reasonable accessibility of data in the usage reporting system utilized to provide these reports.

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

#### I. New York State Law

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

#### II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

#### III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan

## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

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

- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
  2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts
- Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
  2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

### V. Fraud

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

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>. Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

## 2.12 PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

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

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

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

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

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

## 2.13 DIESEL EMISSION REDUCTION ACT

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

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

## 2.14 NEW YORK STATE VENDOR RESPONSIBILITY

The Contractor shall at all times during the Piggyback Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

## **GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES**

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Piggyback Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Activity under the Piggyback Contract may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Piggyback Contract.

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

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Piggyback Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Piggyback Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **2.15 "OGS OR LESS" GUIDELINES**

Purchases of the Products included in the Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

### **2.16 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

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

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

### **2.17 SUBCONTRACTORS OR THIRD PARTIES**

#### **Responsibility for Performance**

Contractor shall be fully liable for a Subcontractor or Third Party's performance and compliance with all Contract terms and conditions.

### **2.18 NEW ACCOUNTS**

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

### **2.19 CONTRACT MODIFICATIONS**



## GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES

### A. Piggyback Contract Modifications

Any modifications to this Piggyback Contract, must be made by an instrument in writing executed by the Parties, and subject to approval by OSC.

### B. Master Contract Modifications

Contractor shall submit copies of any modifications to the Master Contract, including new products, terms, or price changes, to OGS for review prior to enactment. OGS, subject to approval by OSC if required, may accept a modification to or renewal of the Master Contract in full.

### C. Authorized Users

An Authorized User shall not have the authority to accept any requests for modifications to the Piggyback Contract, which must be handled as outlined in Paragraph A of this section. However, in accordance with Appendix B *Modification of Contract Terms*, in a specific transaction an Authorized User shall have the authority to accept an offer from Contractor for more advantageous terms and pricing than those provided under this Piggyback Contract.

## 3. GENERAL PROVISIONS

### 3.1 NOTICES

Unless otherwise provided in the Contract, notices, demands, designations, certificates, requests, offers, consents, approvals, and other instruments ("Notices") given pursuant to this Contract shall be in writing to the Parties' respective representative and shall be validly given when e-mailed, mailed by registered or certified mail, or hand delivered.

The Parties may, from time to time, specify any address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

Prior to exercising any right of set-off, the State shall provide Contractor with reasonable prior notice and an explanation of which obligations are being set off against the State's unpaid invoices.

### 3.2 CAPTIONS

The captions contained in this Piggyback Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

### 3.3 SEVERABILITY

If any provision of this Piggyback Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Piggyback Contract, which shall be enforced and interpreted as if such provision was never included in the Piggyback Contract.

### 3.4 COUNTERPARTS

This Piggyback Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract and shall bind such party.

### 3.5 ENTIRE AGREEMENT

This Piggyback Contract and the referenced appendices constitute the entire agreement between the Parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Piggyback Contract shall not be changed, modified or altered in any manner except as provided in Section 2 of this Piggyback Contract.

**GROUP 79011, Award PGB-23267 – SMALL PACKAGE DELIVERY SERVICES**

IN WITNESS WHEREOF, this Piggyback Contract is effective as of the date of OSC approval below. The Parties further hereby certify that original copies of this executed and approved signature page will be affixed, upon final approval, to exact copies of this Piggyback Contract being executed simultaneously herewith. The acknowledgment 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 agreement, Appendix A (*Standard Clauses For New York State Contracts*), Appendix B (*General Specifications*), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

**CONTRACTOR, as agent for Federal Express Corporation and FedEx Ground Package System, Inc.**

Signature: *William Linkin*  
Printed Name: William Linkin  
Title: Worldwide Account manager  
Date: May 5, 2022  
Company Name: FEDEX CORPORATE SERVICES, INC.  
Federal ID: 62-1808017  
NYS Vendor ID: 1100271679

**THE PEOPLE OF THE STATE OF NEW YORK, ACTING BY AND THROUGH THE COMMISSIONER OF GENERAL SERVICES**

Signature: *John Normile*  
Printed Name: John Normile  
Title: Procurement Manager I  
Date: May 11, 2022  
Office of General Services

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER**

**APPROVED**  
DEPT. OF AUDIT & CONTROL  
  
May 27 2022  
Brian Fuller  
  
FOR THE STATE COMPTROLLER

**INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT**

STATE OF New Jersey )

: ss:

COUNTY OF Monmouth )

On the 5<sup>th</sup> day of May in the year 2022, before me personally appeared William H. Linkin, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains an office at 900 7<sup>th</sup> Street NW, Suite 550, Washington, DC 20001

and further that:

[Check One]

- If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.
- If a corporation): he is the Worldwide Account Manager of FedEx Corporate Services, Inc., the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
- If a partnership): he is the \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
- If a limited liability company): he is a duly authorized member of \_\_\_\_\_, LLC, the limited liability company described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Patricia Morgado

Signature of Notary Public

Notary Public Registration No. 2414226

State New Jersey

Expires 11-1-2026

PATRICIA MORGADO  
NOTARY PUBLIC OF NEW JERSEY  
Comm # 2414226  
My Commission Expires 11/1/2026