



## CITY OF WORCESTER, MASSACHUSETTS



Administration & Finance  
Purchasing Division  
455 Main Street – Room 201  
Worcester, MA 01608  
(508) 799-1220  
[www.worcesterma.gov](http://www.worcesterma.gov)

October 13, 2021

To All Bidders:

Subject: **Bid No. 7694-W2, Vehicles, School Buses / WPS**

### **ADDENDUM NO. 2**

To Whom It May Concern:

With reference to our bid request relative to the above subject, please refer to the changes/modifications/clarifications to the original proposal request.

- **Please see general bid clarifications as follows:**
  - Sample Contract is attached for bidder information.
  - LIGHTS (SCHOOL WARNING)  
Delete: 8-way STROBE or incandescent school bus warning system with individual black hoods  
***Insert: 8-way STROBE school bus warning system with individual black hoods***
  - LIGHTS (EXTERIOR)  
Delete: Stop, tail and backup lights to be LED. All exterior lights to be LED with exception of headlights and warning lights  
***Insert: All exterior lights to be LED with the exception of headlights***

Proposers are requested to acknowledge and/or include this addendum with proposal. All other terms, conditions and specifications remain unchanged.

Very truly yours,

Christopher J. Gagliastro  
Purchasing Director

## CONTRACT

**THIS AGREEMENT**, made \_\_\_\_\_, 2021, by and between, Contractor of [ ] , [ ] , hereinafter referred to as the "Seller", and the **City of Worcester**, a Massachusetts municipal corporation with an address of 455 Main Street, Worcester, MA 01608, acting by and through the Worcester Public School Department, with an address of 20 Irving Street, Worcester, Massachusetts 01609, hereinafter referred to as the "Purchaser".

1. The Seller hereby agrees to furnish **one hundred sixty-five (165) units of model year 2021 or newer Chevrolet or GMC Dual Rear Wheel Chassis Model School Buses**, hereinafter referred to as "School Buses," according to the City Bid specifications hereto attached and made a part of this Agreement, and to deliver the same as hereinafter provided.
2. Any changes to this Agreement must be through a written amendment executed by both parties.
3. The School Buses shall be ready for delivery from [ ] , [ ] , on or before June 1, 2022.
4. The following documents are incorporated herein by reference and are made a part of this Agreement: Sealed Bid No. **7694-W2** issued by the City on October \_\_, 2021, including all incorporated specifications and addenda; Seller's Bid in response to Purchaser's request for invitations (but excluding any legal terms and conditions and/or Seller's template form of contract). Seller shall comply with all requirements and obligations as set forth in this Agreement and the City Bid specifications.
5. The completed School Buses shall be delivered to the Purchaser at:

Worcester Public Schools Transportation Operations Center  
115 North East Cutoff  
Worcester, MA 01606
6. All School Buses will be delivered, ready for service, having been washed and fully prepared for service, including but not limited to, cameras, and must pass all State and Federal requirements and inspections.
7. A competent representative shall, upon request, be furnished by the Seller to demonstrate said School Buses for the Purchaser and to familiarize the Purchaser's employees in the operation and handling of the School Buses.
8. Warranty. The Seller hereby warrants that all material, equipment and workmanship in the School Buses pursuant to this Agreement is merchantable, free from defects, whether patent or latent in material or workmanship, and fit for the ordinary purposes for which it is intended, and shall promptly replace any defective equipment, materials, and/or workmanship required without additional cost to Purchaser. The Seller guarantees that all material, equipment and workmanship shall comply with the Bid specifications and change orders. In the event there is a conflict between the City Bid Specifications and the Contractor Bid Proposal, the City Bid specifications.
  - 8.1 The Seller hereby warrants all material, equipment and workmanship in the School Buses for a period of thirty-six (36) months after the final inspection and acceptance by Purchaser of the School Buses. The warranty shall cover, but shall not be limited to, the following components: braking; steering; suspension; body of the bus; fuel delivery; air conditioning

and heating; electronics and electrical systems; engine, transmission and axles (“Bumper-to-Bumper Warranty”).

- 8.2 In the event of a defect or any other problem that cannot be fixed, Seller shall promptly furnish an acceptable solution that provides a functionally equivalent replacement for the deficient component, unit or school bus.
  - 8.3 All costs, including any costs incurred by Seller from third parties, arising from or relating to Seller’s obligations pursuant to this Agreement shall be furnished without cost to the Purchaser, including but not limited to parts, labor, travel and shipping costs.
  - 8.4 The terms and conditions of this warranty shall apply to any and all repairs, replacements, and other corrections, of whatever kind or nature, thereby restarting the warranty period to the extent thereof.
  - 8.5 This regard to all third party warrantees, effective on the date of final acceptance of the School Buses by Purchaser, and as a condition of final payment, Seller shall assign to the Purchaser all third party assignable warranties and extended warranties. Said warrantees shall continue for not less than twelve (12) months thereafter, unless a greater period of time is prescribed by the terms of any third party warranty or license.
  - 8.6 It is expressly understood that this warranty is not the Purchaser’s exclusive remedy and shall not absolve Seller from any liability to Purchaser out of a failure to comply with this Agreement. The rights and remedies provided herein are in addition to and do not limit any rights afforded to Purchaser by any other clause of this Agreement or as may be available at law or equity.
  - 8.7 Seller shall further provide any additional warranty(ies) required in the Purchaser’s invitation for bids.
  - 8.8 Seller hereby warrants it is a fully authorized factory dealer for the School Buses, including parts and services and shall maintain a place of business within one hundred (100) miles of Worcester, Massachusetts. For any service under this warranty, Seller shall pick up bus(es) from their current location in Worcester, Massachusetts and upon completion of the service deliver bus(es) back to the Worcester Public Schools Operation Center within ten (10) days of pickup. Upon completion of the service hereunder, all School Buses will be delivered, ready for service, having been washed and fully prepared for service.
9. Indemnification. To the fullest extent permitted by law, Seller shall defend, indemnify and hold harmless the Purchaser and its officers, officials and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney’s fees and costs of investigation and litigation, whatsoever brought because of any injury (including death) or damage received or sustained by any person, persons or property arising out of, or resulting from the Seller’s breach of any provision of this Agreement or any asserted negligent act, error or omission of the Seller, its officers, employees, consultants or other person for whom the Seller is responsible under this Agreement. The Indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this Agreement. Seller’s obligations under this provision shall not terminate with the expiration or termination of this Agreement, but shall survive it.
- 9.1 The Purchaser is not required to indemnify the Seller.

10. Insurance. Seller shall be required to carry and furnish evidence to the Purchaser of the following insurance requirements:

10.1 COMMERCIAL GENERAL LIABILITY INSURANCE: Seller to supply Purchaser with certificates of insurance evidencing general liability coverage of not less than \$ 2,000,000.00 per occurrence / \$ 4,000,000.00 aggregate. Said insurance to be maintained during the one thirty month warranty period after final acceptance of School Buses by Purchaser

10.2 AUTOMOBILE LIABILITY INSURANCE: Seller to supply Purchaser with certificates of insurance evidencing automobile liability coverage, bodily injury and property damage combined single limit, of \$ 1,000,000.00 (all owned, hired, and non-owned autos).

10.3 COMPENSATION INSURANCE: The Seller shall furnish the Purchaser with certificates showing that all of his/her employees who shall be connected with this work are protected under Massachusetts' statutory worker's compensation insurance policies.

10.4 The Seller shall carry public liability insurance with an insurance company satisfactory to Purchaser so as to save Purchaser harmless from any and all claims for damages arising out of bodily injury to or death of any person or persons, and for all claims for damages arising out of injury to or destruction of property caused by accident resulting from the use of implements, equipment or labor used in the performance of the Agreement or from any neglect, default or omission, or want of proper care, or misconduct on the part of the Agreement or for anyone of his employ during the execution of the Agreement.

10.5 Prior to execution of the Agreement, the Seller shall provide an insurance certificate(s) evidencing the coverage required above and in a form satisfactory to Purchaser. The City shall be named as additional insured on the above coverage, (a) and (b). The Certificate Holder shall be City of Worcester, Purchasing Department, 455 Main Street, Worcester, MA 01608.

11. Waiver. No failure or delay on the part of Purchaser to exercise any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy by Purchaser preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

13. Purchaser agrees to pay the sum of **Dollars (\$00)**, state, federal, FET, or Local Taxes not included, for the School Buses, upon acceptance by Purchaser not to exceed thirty (30) days from delivery/final acceptance date and subject to proper presentment of an invoice to Seller making reference to this Agreement. The total sum includes all fees, but not limited to, delivery, dealer preparation, warranty and in-service training fees. The Purchaser is a tax-exempt municipality and will not pay taxes of any kind in relation with the purchase of said School Buses.

13.1 All payments shall be made payable to Seller and shall be mailed directly to:  
[insert address]

14. In the case that no final inspection is made by the Purchaser at the factory prior to shipment and the Purchaser desires to test the School Buses upon receipt, such test shall be made within three (3) days after arrival at the delivery destination specified above. Written Notice of such test and a report detailing the findings shall be delivered forthwith to the Seller at its principal office at [ ].

15. The School Buses covered by this Agreement shall remain the property of the Seller until the School Buses are delivered and accepted by the Purchaser, such acceptance shall not be unreasonably withheld or delayed.

16. Risk of loss shall pass to the Purchaser upon delivery and acceptance of the School Buses.

17. The School Buses must fully comply with all applicable Federal and Massachusetts laws and regulations, including but not limited to, requirements of the Department of Education and the Department of Motor Vehicles. Without limiting the generality of the foregoing, Seller is responsible for ensuring that the School Buses are in new and excellent condition and satisfy all preconditions and criteria as described in the Bid specifications.

18. The Seller shall agree that, in the event of a conflict between the parties, the laws of the Commonwealth of Massachusetts shall apply. The Seller shall further agree to the personal jurisdiction of any federal or state court located in Worcester County, Massachusetts and waives any objection based on non conveniens with respect to any action rising out of or relating to this Agreement.

18.1 The Purchaser will not agree to mandatory arbitration or mediation.

19. Termination. If either party shall fail to fulfill in a timely and proper manner its obligation under this Agreement for any cause, or if either party shall violate any of the terms, covenants and conditions of this Agreement, then the offended party shall provide the offending party written notice and thirty (30) days to remedy or cure the default. If the offending party fails to act to remedy the situation during the thirty (30) days, the offended party then shall have the right to terminate this Agreement.

20. Limit of Liability. Seller shall not have the right to recover attorney's fees, or consequential, indirect or punitive damages from Purchaser, including but not limited to lost opportunity or lost profit damages.

21. "Force Majeure" means an event that is not within the reasonable control of the party claiming Force Majeure ("Claiming Party"), and that by the exercise of due diligence, the Claiming Party is unable to overcome in a commercially reasonable manner and shall not be deemed in breach or default under this Agreement. Force Majeure includes, but is not limited to acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure (excluding generator failure); curtailment, disruption or interruption of supply; declaration of emergency by the ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of the party subject to the Force Majeure. Notwithstanding any other provision of this Agreement, if either party is unable to carry out any obligation under this Agreement due to a Force Majeure event (other than payment obligations of this Agreement which will not be excused for Force Majeure), this Agreement will remain in effect but such obligation will be suspended for the period necessary as a result of the Force Majeure, provided that: (i) the non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature and date of the occurrence and the expected duration of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and (iii) the non-performing party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period in excess of thirty (30) consecutive days during the term of the Agreement, the performing party may terminate this Agreement by right with respect to those terms adversely affected by the Force Majeure by providing the non-performing party written notice not less than five (5) days after the elimination period has expired.

22. Any formal notices necessary under this Agreement shall be given by certified mail, return receipt requested, and addressed to Purchaser at the City Manager, 455 Main Street, Worcester, MA 01608, and addressed to the Seller at the address appearing in the first paragraph of page 1 of this Agreement. Either party shall notify the other of any change in their respective addresses.

23. Except as expressly set forth in this Agreement, the parties affirmatively state that this Agreement is not intended to confer any express or implied benefits on any other person. To the full extent allowed by law, this Agreement shall not confer third party beneficiary status on any person.

24. This Agreement including the City Bid specifications contains the entire understanding of the parties and supersedes all prior agreements, representations, proposals and undertakings of the parties.

**IN WITNESS WHEREOF**, the said parties have caused these presents to be executed and the Purchaser has caused its seal to be hereunto affixed, and attested by its authorized representatives, on this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

***CITY OF WORCESTER ("Purchaser")***

Recommending Department:

\_\_\_\_\_  
Maureen Binienda, Superintendent  
Worcester Public Schools

\_\_\_\_\_  
Christopher J. Gagliastro  
Purchasing Director

Approved as to legal form:

\_\_\_\_\_  
Deputy City Solicitor

**APPROVED:**

\_\_\_\_\_  
Administration & Finance

\_\_\_\_\_  
Edward M. Augustus, Jr.  
City Manager

***Contractor ("Seller")***

By \_\_\_\_\_

Title:

Date of Acceptance:

