

## Contractor's Insurance Requirements

**Upon tentative award**, the Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of any contract resulting from this solicitation, policies of insurance as herein below set forth written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Authorized Carriers") with an A.M. Best Company rating of "A-" Class "VII" or better. If during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services (OGS) and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities, or liabilities under any contract resulting from this solicitation.

### General Conditions

**A. Conditions Applicable to Insurance.** All policies of insurance required by any contract resulting from this solicitation must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B Insurance Requirements below.
2. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
3. **Certificates of Insurance/Notices.** Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS, upon tentative award and within five (5) business days of request. Certificates shall reference this solicitation number and the Contract Number of any contract resulting from this solicitation, as applicable. **ALL OF THE ABOVE REFERENCED FORMS, EXCEPT CE-200, SI-12, & DB-155 MUST NAME:** The Office of General Services, NYSPRO, Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). Certificates shall be submitted to:

#### **The New York State Office of General Services Procurement Services**

Corning Tower-38<sup>th</sup> Floor  
Empire State Plaza  
Albany, NY 12242.

4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be cancelled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention: NYSPRO, Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, NY 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- a. Be in the form approved by OGS.
- b. Disclose any deductible, self-insured retention, aggregate limit, or any exclusion to the policy that materially changes the coverage required by any contract resulting from this solicitation.
- c. Specify the Additional Insureds and Named Insured as required herein.
- d. Refer to this solicitation number and any contract resulting from this solicitation by number and any other attachments on the face of the certificate, and

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- e. Be signed by an authorized representative of the insurance carrier or producer.

Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent, or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

- 5. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply only on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any other Authorized User for any claim arising from the Contractor's work under any contract resulting from this solicitation, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
- 6. **Policy Renewal/Expiration.** At least thirty (30) days prior to the expiration of any policy required by this solicitation or any contract resulting from this solicitation, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph A.3. Certificates of Insurance/Notices above. If, at any time during the term of any contract resulting from this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation or any contract resulting from this solicitation or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this solicitation or any contract resulting from this solicitation, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under any contract resulting from this solicitation, treating such failure as a breach or default of any contract resulting from this solicitation. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this solicitation, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by any contract resulting from this solicitation or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against OGS or any Authorized User, their agents, and employees therefore for lost profits or any other damages.
- 7. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- 8. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of any contract resulting from this solicitation the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by any contract resulting from this solicitation shall be endorsed to name The People of the State of New York, its officers, agents, and employees as additional insureds hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided upon tentative award and within five (5) business days of request to OGS, NYSPRO, Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, NY 12242. The additional insured requirement does not apply to Workers Compensation, Disability, or Professional Liability coverage.

- B. **Insurance Requirements.** The Contractor, throughout the term of any contract resulting from this solicitation, or as otherwise required by any contract resulting from this solicitation, shall obtain and maintain in full force and effect, the following insurance within limits not less than those described below and as required by the terms of any contract resulting from this solicitation, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

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**1. Commercial General Liability Insurance (CGL)** covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operations under any contract resulting from this solicitation. The limits under such policy shall not be less than the following:

- Each Occurrence limit \$2,000,000.00
- General Aggregate \$2,000,000.00
- Products/Completed Operations \$2,000,000.00
- Personal Advertising Injury \$1,000,000.00
- Damage to Rented Premises \$50,000.00
- Medical Expense \$5,000.00

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors,
- blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under any contract resulting from this solicitation,
- cross liability for additional insureds,
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by any contract resulting from this solicitation,
- explosion, collapse, and underground hazards, and
- contractor means and methods.

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent – Additional Insured – Owner, Lessees or Contractors (Form B)
- c. Waiver of Subrogation

**2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under any contract resulting from this solicitation, including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least **\$2,000,000.00** each accident and shall name the People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies.

Waiver of Subrogation. For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage, or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, its officers, agents, and employees, the New York State Office of General Services and any Authorized User of any contract resulting from this solicitation. Waiver of Subrogation Endorsements shall be provided upon tentative award and within five (5) business days of request to OGS, NYSPRO, Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, NY 12242.

**3. Workers' Compensation Insurance and Disability Benefits Requirements:**

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses, or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license, or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

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**Proof of Compliance with Workers' Compensation Coverage Requirements. An ACORD form is NOT acceptable proof of workers' compensation coverage.** In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **within five (5) business days of notification of tentative award:**

- a. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)); (Reference applicable bid and Group #s on the form.)
- b. Certificate of Workers' Compensation Insurance:
  1. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
  2. Form U-26.3 if coverage is provided by the State Insurance Fund, a contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

**Proof of Compliance with Disability Benefits Coverage Requirements:** In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from and insurance carrier; or
- c. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **within five (5) business days of notification of tentative award:**

- a. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)); (Reference applicable bid and Group #s on the form.)
- b. Form DB-120.1 Certificate of Disability Benefits Insurance. A contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- c. Form DB-155, Certificate of Disability Benefits Self-Insurance. A contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

**C. Data Breach/Cyber Liability Insurance Including Technology Error and Omissions**

The contractor shall carry and maintain applicable coverage with a limit of \$5,000,000.00.

If the Contractor provides technology services or products, the contractor must also provide Technology Errors & Omissions Coverage. AS this insurance is most often written on a claims made basis the Contractor shall purchase,

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at its sole expence, extended Discovery Clause coverage of up to three (3) years after the work is completed if coverage is cancelled or not renewed.

- D. Pharmacists Professional Liability Insurance:** The Contractor shall carry coverage insurance for claims made against its pharmacy and/or pharmacist(s) involving an actual or alleged error or omission while carrying out duties that are within the “scope of practice” (as defined by New York State) for a pharmacy or pharmacist in the amount of \$3,000,000.00. The Pharmacists Professional Liability Insurance may be issued on a claims-made policy form, in which case the Contractor shall purchase, at its sole expense, extended Discovery Clause coverage of up to three (3) years after the work is completed if coverage is canceled or not renewed.

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