

Attachment 4

Contractor Insurance Requirements

The prospective awardee shall be required to procure, at its sole cost and expense, all insurance required by this section.

The prospective awardee shall be required to provide proof of compliance with the requirements of this section, as follows:

- Proof of Workers' Compensation and Disability Benefits Insurance shall be provided at the time of bid submission;
- Proof of Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance shall be provided within ten (10) business days of tentative award;
- Additional Insured Endorsements for the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance shall be provided to OGS within twenty (20) business days of tentative award and within three (3) days of request;
- Proof of Owners and Contractors Protective Insurance shall be provided by the contractor to the Authorized User upon awarding of a project as the result of a Quick Quote, if an Authorized User requested such coverage on the Quick Quote. The Authorized User reserves the right to cancel awarding of a project if the required OCP insurance cannot be provided.
- After award, the Contractor shall be required to provide proof of all insurance within thirty (30) days after renewal or three (3) days of request or as otherwise required in this section.

During the term of any Contract resulting from this solicitation, the Contractor shall maintain in force, at its sole cost and expense, policies of insurance as required by this section. All insurance required by this section shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with an insurer rated at least "A-," Class "VII" in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of the insurance required by this section in a form acceptable to OGS. 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 the Contractor of any obligations, responsibilities or liabilities under any Contract resulting from this solicitation.

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 term of any Contract resulting from this solicitation.

General Conditions

A. *Conditions Applicable to Insurance.* All policies of insurance required by this section shall comply with the following requirements:

- 1. *Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Contractor are specified below in Paragraph B-*Insurance Requirements*.
- 2. *Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required by this section shall be written on an occurrence basis.
- 3. *Certificate of Insurance/Policies/Notices.*** The Contractor shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS (i.e., an ACORD certificate), demonstrating proof of Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance coverage within ten (10) business days of tentative award, and thereafter, within thirty (30) days after renewal or within three (3) business days of request. Certificates shall reference the Contract number and shall name the New York State Office of General Services, Procurement Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 38th Floor, Albany, New York 12242 as the certificate holder. In the event that an Authorized User requires Owners and Contractors Protective insurance, the policy providing such coverage shall be provided to the Authorized User.

Policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law. The Contractor shall provide OGS with a copy of any written notice of cancellation or non-renewal received from an insurer along with proof of replacement coverage that complies with the requirements of this section within ten (10) business days of receipt.

Certificates of Insurance shall:

- Be in the form acceptable to OGS (i.e.: an ACORD Certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by any Contract resulting from this solicitation.
- Refer to this Contract by number;
- Be signed by an authorized representative of the referenced insurance carriers; and Contain the following language in the Description of Operations/Locations/Vehicles section: The People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage), General liability coverage is provided on Commercial General Liability Coverage Form CG 00 01 01 (or a form that provides equivalent coverage). Insurance is primary and non-contributory to other insurance available to the People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees. A waiver of subrogation is granted in favor of The

People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees. All policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law.

Only original documents (an ACORD Certificate and any endorsements and other attachments, or in the case of Owners and Contractors Protective insurance the policy) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

With the exception of the Owners and Contractors Protective insurance requirement set forth herein, OGS has not requested prospective awardees or Contractors to submit copies of their entire insurance policies. Generally, OGS only requests specific documentation regarding proof of insurance coverage, such as an ACORD form and endorsements. Prospective awardees and Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OGS as in the case of the Owners and Contractors Protective insurance requirement set forth herein. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge prospective awardees and Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.
5. **Breach for Lack of Proof of Coverage.** The term of any Contract resulting from this solicitation shall not commence if the coverage provisions and limits of the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance policies provided by the Contractor do not meet the provisions and requirements of this section or proof of compliance is not provided to OGS. In addition, the failure to comply with the requirements of this section at any time during the term of any Contract resulting from this solicitation shall be considered a breach of the terms of that Contract and shall allow the People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this solicitation or at law or in equity.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions.

7. **Subcontractors.** Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by that subcontractor.
8. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OGS within three (3) days of request.
9. **Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included of each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage) naming as additional insureds: The People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS within twenty (20) business days of tentative award and within three (3) days of request.

B. Insurance Requirements: The Contractor shall, at its own expense, obtain and maintain in full force and effect during the term of any Contract resulting from this solicitation, the following insurance with limits not less than those described below, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. **Commercial General Liability Insurance** covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury arising 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-\$1,000,000.00
 - General Aggregate Limit-\$2,000,000.00
 - Products/Completed Operations Limit-\$2,000,000.00
 - Personal Advertising Injury Limit-\$1,000,000.00
 - Damage to Rented Premises Limit-\$50,000.00
 - Medical Expenses Limit-\$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;
- Products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this solicitation or any Contract resulting from this solicitation;

- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

If at any time during the term of any contract resulting from this solicitation, the Contractor performs work at more than one location, the policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location where work is performed by the Contractor.

2. ***Comprehensive Business Automobile Liability Insurance*** covering liability arising out of any automobile used in connection with performance 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. The limits may be provided through a combination of primary and umbrella liability policies. If performance under any Contract resulting from this solicitation shall require the removal of hazardous waste from the work site or other transporting of hazardous materials, pollution liability coverage for covered autos shall be provided by Form CA 9 48 03 06 or Form CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached to the policy.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this solicitation, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this solicitation on a form provided by OGS. If, however, during the term of any Contract resulting from this solicitation, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this solicitation, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS within ten (10) days following the date the coverage is bound.

3. ***Owners and Contractors Protective Insurance.*** If an Authorized User requests Owners and Contractors Protective insurance in connection with a project, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the project, such coverage as follows:
 - For work related to street, road, highway and/or bridge work - Form CG 00 14, Special Protective and Highway Liability Policy - New York State Department of Transportation
 - For projects not related to street, road, highway and/or bridge work - Form CG 00 09, Owners and Contractors Protective Liability Coverage form - Coverage for Operations of the Designated Contractor.

The policy shall be written on a project basis for the benefit of the Authorized User, its officers, agents and employees and the People of the State of New York, with respect to all operations under the project by the Contractor or its subcontractors, including in such coverage

any omissions and supervisory acts of the Authorized User and its officers, agents and employees.

The Authorized User shall be named in the Owners and Contractors Protective policy which shall be furnished to the Authorized User upon acceptance of a Quick Quote. The policy limits shall be no less than \$1,000,000.00 each occurrence and \$2,000,000.00 in the general aggregate.

WORKERS' COMPENSATION INSURANCE & DISABILITY BENEFITS COVERAGE

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for leases, permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the lease, permit, license or contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a bid.** Therefore, prior to OGS executing any Contract resulting from this solicitation, the Contractor must submit proof to OGS that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers' Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, the Contractor shall provide one of the following forms to OGS prior to execution of any Contract resulting from this solicitation by OGS:

- 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 New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- C) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or 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 the 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, the Contractor shall provide one of the following forms to OGS prior to execution of any Contract resulting from this solicitation by OGS:

- 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 New York State Workers' Compensation Board's website (www.wcb.ny.gov);
- B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Proof of compliance shall be submitted to The New York State Office of General Services, Procurement Services, The Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 38th Floor, Albany, New York 12242.