DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #3

INVITATION TO BID # 2146

Date:	April 5, 2016
Subject:	Questions and Answers regarding Pre-Qualification Submission
Title:	Natural Gas Asset Manager
Bid Due Date:	June 18, 2019
Address Bids to:	Lee Amado Division of Financial Administration NYS Office of General Services 32nd Floor, Corning Tower Empire State Plaza Albany, New York 12242 **IFB# 2146**

To Prospective Bidders: This addendum is being issued to provide answers to questions regarding Pre-Qualification submitted before the March 29th deadline.

Questions and Answers

Answers to Questions regarding Pre-Qualification submitted by Vendors prior to the March 29, 2019 deadline

Q1. Is NYSOGS willing to look at any redlines to their NAESB special provisions?

A1: Please refer to Section 4.9 Exceptions and Extraneous Terms, and request any specific changes by the Deadline for Submission of 2nd Round Bidder Questions which is April 17th, 2019.

All other terms and conditions remain unchanged.

*****If submitting a proposal, this Addendum #3 for IFB #2146 must contain an original signature, be dated, attached to, and made a part of your bid.

Company Name_____

Address (include City, State, Zip)_____

Bidders Name (please print)_____

Title_____

Signature_____

Date_____

DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #2

INVITATION TO BID # 2146

Date:	March 27, 2016
Subject:	Optional Pre-Bid Conference Attendees Presentation Materials for Pre-Bid Conference Revisions to IFB 2146
Title:	Natural Gas Asset Manager
Bid Due Date:	June 18, 2019
Address Bids to:	Lee Amado Division of Financial Administration NYS Office of General Services 32nd Floor, Corning Tower Empire State Plaza Albany, New York 12242 **IFB# 2146**

To Prospective Bidders: This addendum is being issued to provide a list of optional Pre-Bid Conference attendees, provide the presentation materials for the Pre-Bid Conference, and provide revisions to IFB 2146.

Optional Pre-Bid Conference Attendees:

Vendors who attended the Optional Pre-Bid Conference on March 27th at 11:00 AM

- BP Energy
- Direct Energy Business
- Direct Energy Business Marketing LLC
- UGI Energy Services

Addition

A copy of the presentation materials used at the Pre-Bid Conference has been attached to this addendum.

R1- Revision to Section 1.3- Key Dates

Action	Date
OGS Issues Invitation For Bid (IFB) for Asset Manager	March 6, 2019
Optional Pre-Bid Conference	March 27, 2019 at 11:00am ET
Deadline for Written Questions regarding Pre-Qualification Submission	March 29, 2019
OGS Issues Responses for Questions regarding Pre-Qualification Submission (estimated)	April 5, 2019
Pre-Qualification Submission Deadline	April 17, 2019
Deadline for Submission of 2nd Round Bidder Questions	April 17, 2019
OGS Issues Responses to 2nd^{t} Round Written Questions (estimated)	May 1, 2019
OGS Notifies Vendor of Qualification Status (estimated)	May 22, 2019
Deadline for Submission of 3rd Round Bidder Questions	May 30, 2019
OGS Issues Responses to 3rd Round Written Questions (estimated)	June 6, 2019
Bid Due Date/ Bid Opening Date	June 18, 2019 @ 10:00 am ET
Estimated Contract Start Date	September 1, 2019

R2- Revision to Contract Date in Section 2.2- Transportation Asset to be Released, Section 4.4- Term of Contract

The contract shall term on August 31,2023, rather than October 31, 2023.

R3 - Revision to Section 2.12-Supply Requirements Price

The date of the Platt's forward price curves referenced in section 2.12 Supply Requirements Price for the evaluation of winter bids is being revised from 3/29/18 to 6/11/19.

R4 - Revision to Section 3.7- Instructions for Bid Submission

The time that was referenced in Section 3.7 Instructions for Bid Submission indicated that bids must be received "on or before 2:00 PM on the date indicated in **Section 1.3- Key Events**." The correct time for this time is 10:00 AM ET, as indicated in Section 1.3- Key Events.

R5 – Revision to Attachment 2a Pre-Qualification Submission Checklist

Attachment 2a- PreQualification Submission Checklist is hereby deleted and replaced with the attached PreQualification Submission checklist

All other terms and conditions remain unchanged.

*****If submitting a proposal, this Addendum #2 for IFB #2146 must contain an original signature, be dated, attached to, and made a part of your bid.

Company Name_____

Address (include City, State, Zip)_____

Bidders Name (please print)_____

Title_____

Signature_____

Date_____

IFB 2146

Pre-Bid Conference
Presentation Materials

NEW YORK STATE OF OPPORTUNITY. | Office of General Services

Natural Gas Asset Manager

INVITATION FOR BID (IFB) #2146
SOLICITED BY THE
NEW YORK STATE OFFICE OF GENERAL SERVICES

March 27, 2019

Overview

This IFB is being released by the New York State Office of General Services Division of Financial Administration on behalf of the OGS Energy Planning and Procurement Division

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Ground Rules

- The Chat functionality has been disabled and all phones are muted until the question and answer period at the end of the presentation. If connectivity issues, email Lee.Amado@ogs.ny.gov.
- Save all questions until the end
  - Only questions submitted in writing will be given official answers (please see section 3.1)
  - No “chat” questions will be entertained
  - Registered attendees will be called on for questions

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Introductions

- Agency Procurement Office: Mary Slusarz and Lee Amado
- OGS Energy Planning and Procurement Division: Steve Starowicz, John Haff, Jennifer Wright

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OGS will be assigned 4,000 dekatherms/day of Dominion firm transportation through its own Asset Management Arrangement (AMA) to the National Grid East Gate.

The purpose of this IFB is to enter into an AMA with a Manager to provide 100% of the Sheridan Ave Plants daily supply requirements through the use of the assigned Dominion capacity and other delivery methods as identified in the IFB.

Note: Throughout the winter season (November – March) and summer season (April-November) there may be periods when the Plant's supply requirements are greater than the assigned capacity MDQ thus requiring supplemental supply. OGS shall provide historical usage.

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Designated Contacts

Primary:
Lee Amado, 518-473-7396, lee.amado@ogs.ny.gov

Alternates:
Seth Stark, 518-486-2823, seth.stark@ogs.ny.gov

Mary Slusarz, 518-486-2771, mary.slusarz@ogs.ny.gov

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IFB Questions and Clarifications

There will be three opportunities for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted via email to the Designated Contact:

Lee Amado, Contract Management Specialist 2
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Email: Lee.Amado@ogs.ny.gov

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Key Events

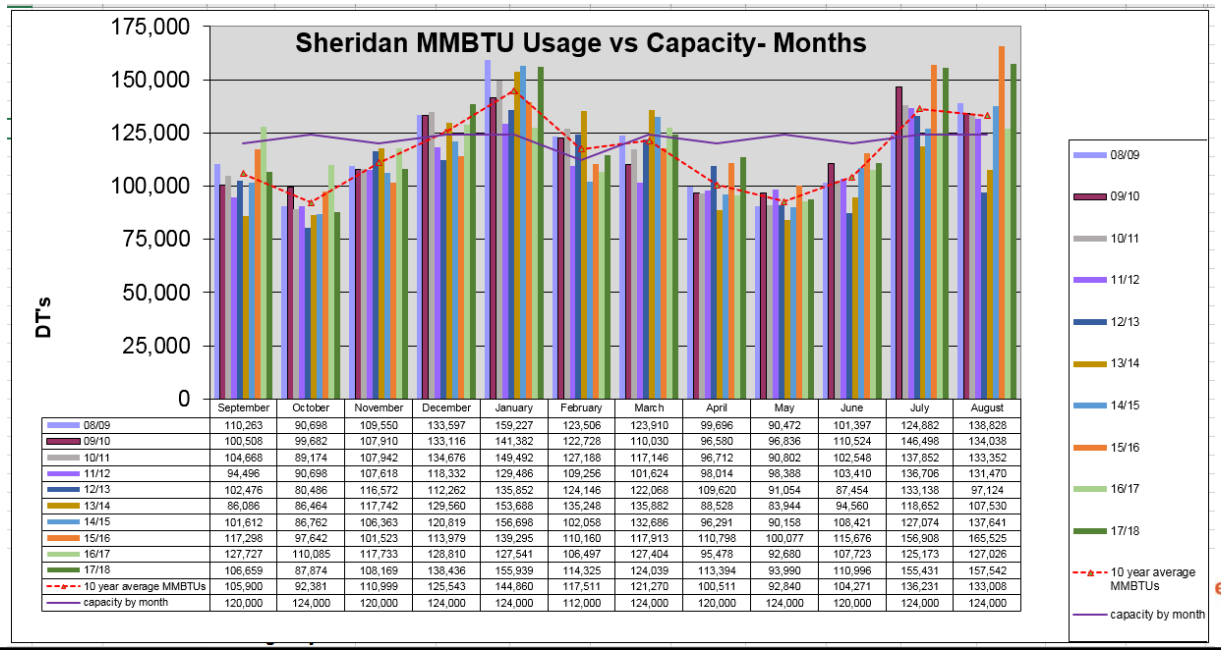
Action2	Date
OGS Issues Invitation For Bid (IFB) for Asset Manager	March 6, 2019
Optional Pre-Bid Conference	March 27, 2019 at 11:00am EST
Deadline for Submission of Pre-Qualification Questions	March 29, 2019
OGS Issues Responses to Pre-Qualification Questions	April 5, 2019
Pre-Qualification Submission Deadline	April 17, 2019
Deadline for Submission of 2nd Round Bidder Questions	April 17, 2019
OGS Issues Responses to 2nd Round Written Questions (estimated)	May 1, 2019
OGS Notifies Vendor of Qualification Status (estimated)	May 22, 2019
Deadline for Submission of 3rd Round Bidder Questions	May 30, 2019
OGS Issues Responses to 3rd Round Written Questions (estimated)	June 6, 2019
Bid Due Date/ Bid Opening Date	June 18, 2019 @ 10:00 am
Estimated Contract Start Date	September 1, 2019

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Minimum Proposer Qualifications

1. Proposer must agree to the terms and conditions contained in the NAESB contract.
2. Proposer must have contracted with large industrial customer(s) with annual usage greater than 1.5 BCF (Billion Cubic Feet), Co Generator(s) or Utility's as an asset manager of DTI and TGP capacity within the past five years. This shall not include "Slice of System" assets released by the utility to an Energy Service Company (ESCO) for their retail access programs.
3. Proposer must have the ability to trigger forward NYMEX pricing for any size volume and duration when requested.
4. Proposer must be an approved shipper on Dominion Transmission Incorporated (DTI).
5. If Proposer elects to use Tier1/Tier 2 pricing, then Proposer must be able to provide any combination of Tier 1 pricing that is requested by OGS.

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	September	October	November	December	January	February	March	April	May	June	July	August
08/09	110,263	90,698	109,550	133,597	159,227	123,506	123,910	99,696	90,472	101,397	124,882	138,828
09/10	100,508	99,682	107,910	133,116	141,382	122,728	110,030	96,580	96,836	110,524	146,498	134,038
10/11	104,668	89,174	107,942	134,676	149,492	127,188	117,146	96,712	90,802	102,548	137,852	133,352
11/12	94,496	90,698	107,618	118,332	129,486	109,256	101,624	98,014	98,388	103,410	136,706	131,470
12/13	102,476	80,486	116,572	112,262	135,852	124,146	122,068	109,620	91,054	87,454	133,138	97,124
13/14	86,086	86,464	117,742	129,560	153,688	135,248	135,882	88,528	83,944	94,560	118,652	107,530
14/15	101,612	86,762	106,363	120,819	156,698	102,058	132,686	96,291	90,158	108,421	127,074	137,641
15/16	117,298	97,642	101,523	113,979	139,295	110,160	117,913	110,798	100,077	115,676	156,908	165,525
16/17	127,727	110,085	117,733	128,810	127,541	106,497	127,404	95,478	92,680	107,723	125,173	127,026
17/18	106,659	87,874	108,169	138,436	155,939	114,325	124,039	113,394	93,990	110,996	155,431	157,542
10 year average MMBTUs	105,900	92,381	110,999	125,543	144,860	117,511	121,270	100,511	92,840	104,271	136,231	133,008
capacity by month	120,000	124,000	120,000	124,000	124,000	112,000	124,000	120,000	124,000	120,000	124,000	124,000

Monthly Data with Averages

MONTH	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	10 year average MMBTUs	capacity by month	Swing volume over 4000
September	110,263	100,508	104,668	94,496	102,476	86,086	101,612	117,298	127,727	106,659	117,473	105,900	120,000	14,100
October	90,698	99,682	89,174	90,698	80,486	86,464	86,762	97,642	110,085	87,874	94,938	92,381	124,000	31,620
November	109,550	107,910	107,942	107,618	116,572	117,742	106,363	101,523	117,733	108,169	118,413	110,999	120,000	9,002
December	133,597	133,116	134,676	118,332	112,262	129,560	120,819	113,979	128,810	138,436	125,444	125,543	124,000	(1,543)
January	159,227	141,382	149,492	129,486	135,852	153,688	156,698	139,295	127,541	155,939		144,860	124,000	(20,860)
February	123,506	122,728	127,188	109,256	124,146	135,248	102,058	110,160	106,497	114,325		117,511	112,000	(5,511)
March	123,910	110,030	117,146	101,624	122,068	135,882	132,686	117,913	127,404	124,039		121,270	124,000	2,730
April	99,696	96,580	96,712	98,014	109,620	88,528	96,291	110,798	95,478	113,394		100,511	120,000	19,489
May	90,472	96,836	90,802	98,388	91,054	83,944	90,158	100,077	92,680	93,990		92,840	124,000	31,160
June	101,397	110,524	102,548	103,410	87,454	94,560	108,421	115,676	107,723	110,996		104,271	120,000	15,729
July	124,882	146,498	137,852	136,706	133,138	118,652	127,074	156,908	125,173	155,431		136,231	124,000	(12,231)
August	138,828	134,038	133,352	131,470	97,124	107,530	137,641	165,525	127,026	157,542		133,008	124,000	(9,008)

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Cost Proposal/Bid Sheet

Assumptions:

must bid AMA % Demand Recovery - vendor must bid a % even if "0"
there may be no null values- if not bidding must enter "x" in that cell
must bid Summer Adder if bidding DTI or TGP Winter Primary
may not bid Summer Adder if bidding Full requirements Nymex plus Basis or DTI NP plus Basis
may bid only one Winter Primary (TGP or DTI)
may not bid TGP Winter, DTI Winter or Summer if bidding NYMEX plus basis or DTI NP plus basis
full requirements commodity bid price shall be defined as either NYMEX plus basis or DTI NP plus basis
bid only once in lines 3-6
fill out full four years of bids

Reminder:

Bidders should insert the price per unit specified and the price extensions in decimals, not to exceed four places
Any alternate bid must be clearly be labeled as such.
OGS may elect any combination of the Tier 1 pricing options as described in Section 2.12 .1.a-d

Early payment discounts offered:

A discount for early payment does not affect bid amounts nor is it considered in making awards

		days after receipt of proper invoice
		days after receipt of proper invoice

INSTRUCTIONS: Fill in your company name and then rows 1 - 6 for all years. When all four years are complete, click "verify" button below

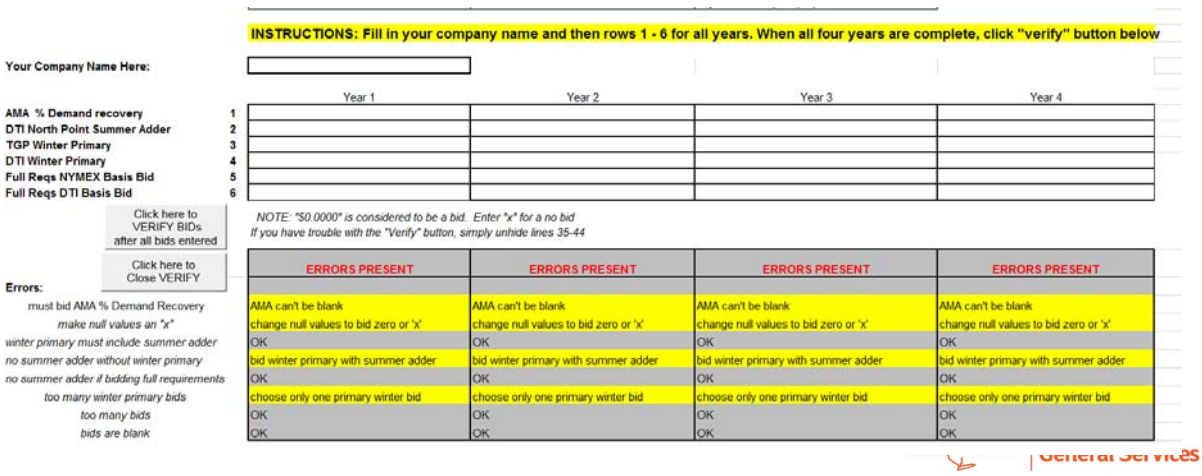
Your Company Name Here:

		Year 1	Year 2	Year 3	Year 4
AMA % Demand recovery	1				
DTI North Point Summer Adder	2				
TGP Winter Primary	3				
DTI Winter Primary	4				
Full Reqs NYMEX Basis Bid	5				
Full Reqs DTI Basis Bid	6				

Click here to VERIFY BIDs after all bids entered

NOTE: "$0.0000" is considered to be a bid. Enter "x" for a no bid
If you have trouble with the "Verify" button, simply unhide lines 35-44

Cost Proposal/Bid Sheet
Error messages



INSTRUCTIONS: Fill in your company name and then rows 1 - 6 for all years. When all four years are complete, click "verify" button below

Your Company Name Here:

		Year 1	Year 2	Year 3	Year 4
AMA % Demand recovery	1				
DTI North Point Summer Adder	2				
TGP Winter Primary	3				
DTI Winter Primary	4				
Full Reqs NYMEX Basis Bid	5				
Full Reqs DTI Basis Bid	6				

Click here to VERIFY BIDs after all bids entered

Click here to Close VERIFY

NOTE: "$0.0000" is considered to be a bid. Enter "x" for a no bid
If you have trouble with the "Verify" button, simply unhide lines 35-44

Errors:	ERRORS PRESENT	ERRORS PRESENT	ERRORS PRESENT	ERRORS PRESENT
must bid AMA % Demand Recovery	AMA can't be blank	AMA can't be blank	AMA can't be blank	AMA can't be blank
make null values an "x"	change null values to bid zero or 'x'	change null values to bid zero or 'x'	change null values to bid zero or 'x'	change null values to bid zero or 'x'
winter primary must include summer adder	OK	OK	OK	OK
no summer adder without winter primary	bid winter primary with summer adder	bid winter primary with summer adder	bid winter primary with summer adder	bid winter primary with summer adder
no summer adder if bidding full requirements	OK	OK	OK	OK
too many winter primary bids	choose only one primary winter bid	choose only one primary winter bid	choose only one primary winter bid	choose only one primary winter bid
too many bids	OK	OK	OK	OK
bids are blank	OK	OK	OK	OK

Prequalification to Submit a Bid

Only vendors who have submitted pre-qualification information will receive updates and responses to questions regarding this IFB and will be able to submit bids.

Please note: by prequalifying the Contractor is not obligated to submit a bid.

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Submission for Prequalification

Submission for Prequalification will consist of two major components:

1. Technical Submission
2. Administrative Submission

Technical Prequalification

Consists of:

- Cover letter (see IFB Section 3.3.1.1)
- Minimum Qualifications to Propose Documentation (see IFB Section 3.3.1.2)

Administrative Prequalification

Consists of:

- All documents from IFB Appendix B1
  - Contractor Information (including NYS Vendor ID number)
  - Substitute W-9 (if you don't already have a NYS Vendor ID #)
    - NYS OSC Help Desk http://www.osc.state.ny.us/portal/contactbuss.htm
  - ST-220-TD and ST-220-CA

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Administrative Prequalification (continued)

  - EEO 100 form
  - NYS Vendor Responsibility Form (See IFB Section 5.13)
- Insurance (see IFB Section 3.3.2 and Appendix D)
  - NYS Workers' Compensation
  - NYS Disability Benefits Coverage
  - Attestation regarding other required insurance

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Administrative Prequalification (continued)

- Subcontractors
  - Disclose all potential subcontractors
  - Submit a Vendor Responsibility Questionnaire for each potential subcontractor

Prequalification requirements are listed in the Prequalification Checklist (IFB Attachment 2a). A revised Attachment 2a will be included in Addendum 2 that will be issued soon.

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Bid Format and Content

(for pre-qualified Bidders)

Incomplete Bids will be disqualified

Bids will only be accepted from vendors who submitted the required prequalification documents and successfully prequalified for this opportunity. Bid Submission will consist of two major components:

1. Cost Proposal (IFB Attachment 1)
   - Cost proposal will be sent to vendors who have pre-qualified
   - The bid must indicate "Good Bid" once values are placed in the spreadsheet
2. Administrative Submission
   - Attestations and Certifications from Appendix B2
   - Signed Addenda
   - Any updates to the Vendor Responsibility Questionnaire(s)
   - Signed and notarized IFB Appendix C (contract)

A Bid submission checklist is included as IFB Attachment 2b

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Bid Submission

Both prequalification submissions and bid submissions must include the following:

- Three originals and 1 exact copy of all documents. (Originals contain a unique wet signature for each signed and/or notarized page.)
- One CD or Thumb Drive
  - For the Cost Proposal only, the CD or Thumb Drive must be password protected, and the password must be sent via email to lee.amado@ogs.ny.gov prior to the deadline for submission of bids.

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Bid Submission (continued)

- Bids must be submitted to the address in IFB Section 3.7.
- Bids must be received by the due date and time – June 18, 2019 at 10:00 a.m.
  - Any bids received after this date and time will not be considered for award.

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Bid Opening

- Bids will be opened on June 18, 2019 at 10:00 am.
- All bids must remain valid for 48 hours.

Method of Award

The State intends to award a single contract under this solicitation to the lowest responsive and responsible bidder.

Term of Contract

The contract resulting from this IFB will become effective September 1, 2019 and will continue through August 31, 2023.

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Questions?

NEW YORK STATE OF OPPORTUNITY. Office of General Services

IFB 2146

Attachment 2a-
Pre-Qualification
Submission Checklist
REVISED 3/27/19

In order for the State to evaluate bids fairly and completely, Bidders are strongly encouraged to provide all of the information requested.
All Bidders should indicate in the column "Bid Location" the page number of their bid that addresses each stated checklist item.

Pre-Qualification Checklist

Covered by IFB 2146 Section	Checklist Item	Bid Location (pg #)
Technical Submission		
Cover Letter		
Section 3.2.1.1	Did you state in your Cover Letter that you understand all terms and conditions contained in this IFB? Will you comply with all the provisions of	
Sections 1.3 and 3.2.1.1	Have you addressed how your company will be ready to start services in accordance with the date as indicated on Section 1.3 of the IFB?	
Section 3.2.1.1	Did you include the full contact information of your designated contact? Did you include the name of the principal(s) of the company resposible for this contract if awarded including their function, title, and number of years of service with your company?	
Section 3.2.1.1	Did your Representative sign the Cover Letter?	
Minimum Qualifications		
Section 3.2.1.2	Did you confirm your ability to meet minimum qualifications?	
Section 3.2.1.2	Did you certify that you agree to the terms and conditions in the NAESB Contract as described in Appendix C?	
Section 3.2.1.2	Did you submit NAESB transaction confirmations or other similar documentation for the last five years that demonstrate that your company has contracted with large industrial customer(s), Co Generators or Utilities as an asset manager? This shall not include “Slice of System” assets released by the utility to ESCO’s for their retail access customer program. Pricing provisions may be redacted to preserve confidentiality.	
Section 3.2.1.2	Did you provide an affidavit which certifies that your company has Risk Management Governance Policies and Procedures in place with the authority to trigger forward NYMEX pricing for any size volume and duration when requested pursuant to Section 2.12 - NYMEX Trigger?	
Section 3.2.1.2	Did you submit a valid DTI Service Agreement Applicable to the Capacity Release Program “Shell Agreement”?	
Section 3.2.1.2	If your company intends to submit a Tier1/Tier 2 pricing, did you submit an affidavit that your company can provide any combination of Tier 1 pricing that is requested by OGS?	
Administrative Proposal		
Appendix B	Contractor Information Page	
	Corporate Acknowledgement (must be notarized)	

Pre-Qualification Checklist		
	Contractor Certification (ST-220-TD 4/15)	SUBMIT TO NYS DEPARTMENT OF TAXATION & FINANCE ONLY
	Contractor Certification To Covered Agency (ST-220-CA 12/11)	
	EEO 100 Staffing Plan	
	NYS Substitute W-9 Form (AC 3237-S)	
	NYS Vendor Responsibility Questionaire (AC 3290-S) (For Prime Contractor)	
	NYS Vendor Responsibility Questionaire (AC 3290-S) (For Any Subcontractors)	
Insurance (Appendix D)	Proof of NYS Worker's Compensation Insurance	
	Proof of NYS Disability Insurance	
	Attestation that if awarded the contract, your company acknowledges the stipulated levels of covereage and will maintain the required insurance levels throughout the life of the contract	

One Last Check		
	Did you submit the page number in the column "Bid Location" for each of the criteria above?	
	Did you submit Three Originals each of the Technical Submission and Administrative Requirements? (Originals contain an unique signature on each of the signed pages)	
	Did you submit One Exact Copy each of the Technical Submission and Administrative Items? (Exact Copies can be photocopied and do not require a unique signature)	
	Did you submit one digital copy (thumb drive or CD) of the Technical Submission and Administrative Requirements? If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.	

I certify, with my signature below, that all required information listed above is completed and included in this bid submission.

Authorized Signature: _____

Date: _____

Print Name and Title: _____

Company represented: _____

DIVISION OF FINANCIAL ADMINISTRATION

ADDENDUM #1

INVITATION TO BID # 2146

Date:	March 25, 2019
Subject:	Revision to Section 1.5
Title:	Natural Gas Asset Manager
Bid Due Date:	June 18, 2019 @ 10 AM
Address Bids to:	Lee Amado Division of Financial Administration NYS Office of General Services 32nd Floor, Corning Tower Empire State Plaza Albany, New York 12242 **IFB# 2146**

To Prospective Proposers: This addendum is being issued to revise the due date for submission of registrations for the Optional Pre-Bid Conference.

Revisions

R1 - Revision to Section 1.5 Optional Pre-Bid Conference

For those bidders who wish to participate in the Optional Pre-Bid Conference, they must pre-register with Lee Amado at Lee.Amado@ogs.ny **at least 24 hours in advance**.

All other terms and conditions remain unchanged.

If submitting a proposal, this Addendum #1 for IFB 2146 must contain an original signature, be dated, attached to, and made a part of your proposal.

Company Name_____

Address (include City, State, Zip)_____

Bidders Name (please print)_____

Title_____

Signature_____

Date_____

INVITATION FOR BID (IFB) #2146
SOLICITED BY THE
NEW YORK STATE OFFICE OF GENERAL SERVICES

For

Natural Gas Asset Manager

ISSUE DATE: MARCH 6, 2019

BID DUE DATE: JUNE 18, 2019 @ 10:00 AM

Designated Contact:	Alternate Contact:
Lee Amado	Seth Stark
Voice: 518-473-7396	Voice: 518-486-2823
Fax: 518-486-3651	Same
E-mail: Lee.Amado@ogs.ny.gov	E-mail: Seth.Stark@ogs.ny.gov
Alternate Contact:	
Mary Slusarz	
Voice: 518-486-2771	
Same	
E-mail: Mary.Slusarz@ogs.ny.gov	

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1. Introduction

1.1 Overview

The New York State Office of General Services (OGS) Sheridan Avenue Steam Plant (SASP) located at 79 Sheridan Avenue, Albany, New York generates steam for heating and cooling of the Empire State Plaza (ESP) which houses several New York State Agencies and associated entities. This plant houses boilers which produce the steam necessary to accommodate the ESP's space heating load, domestic hot water heating load and space cooling load via steam turbine driven chillers. The SASP can burn natural gas or fuel oil. The SASP has firm delivery service via the Local Distribution Company (LDC) National Grid.

OGS is directly responsible for the procurement of natural gas for the SASP and has obtained access to firm upstream pipeline capacity (Asset) to the National Grid East Gate for virtually all the SASP daily and monthly requirements. However, throughout the winter season during periods of below normal temperatures there will be a need for delivered supplemental supply above the firm upstream capacity that OGS holds. This can also be the case in the summer period when above normal temperature conditions exist where supplemental supply will be needed.

The purpose of this Invitation for Bid (IFB) is to solicit bids from Asset Managers (Seller) to enter into an Asset Management Arrangement (AMA) to provide 100% or full requirements (Requirement) of OGS' (Buyer) natural gas needs at the SASP. The Requirements will first be met by the Seller utilizing the asset assigned under the AMA, delivered at the Tier 1 price in **Section 2.12**. Additional supply required above the AMA volume will be priced at the Delivery Point at the Tier 2 price in **Section 2.12**.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Lee Amado, Contract Management Specialist 1, NYS Office of General Services, Division of Financial Administration has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email, voice or fax for all inquiries regarding this solicitation.

Lee Amado, Contract Management Specialist 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Lee.Amado@ogs.ny.gov

In the event the designated contact is not available; the alternate designated contacts are:

Seth Stark, Contract Management Specialist 2
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Seth.Stark@ogs.ny.gov

Mary Slusarz, Contract Management Specialist 3
NYS Office of General Services
Financial Administration – Agency Procurement Office

Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-5981
Email: Mary.Slusarz@ogs.ny.gov

For inquires related specifically to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is:

Lori Brodhead, Compliance Specialist
New York State Office of General Services
MWBE and Community Relations
Empire State Plaza, Corning Tower
Albany, New York 12242
Voice: 1-518-486-6866
Fax: 1-518-486-9285
Email: Lori.Brodhead@ogs.ny.gov

For inquires related specifically to Service Disabled Veteran Owned Businesses (SDVOB) provisions of this procurement solicitation, the designated contact is:

Anthony Tomaselli, Assistant Director
New York State Office of General Services
Division of Service-Disabled Veterans' Business Development
Empire State Plaza, Corning Tower
Albany, New York 12242
Voice: 1-518-474-2015
Email: Anthony.Tomaselli@ogs.ny.gov

1.3 Key Events

The Table below outlines the tentative schedule for important action dates. If the State finds it necessary to change any of these dates, notification will be accomplished through an addendum to this IFB.

Action	Date
OGS Issues Invitation For Bid (IFB) for Asset Manager	March 6, 2019
Optional Pre-Bid Conference	March 27, 2019 at 11:00am EST
Pre-Qualification Submission Deadline	April 17, 2019
Deadline for Submission of 1st Round Bidder Questions	April 17, 2019
OGS Issues Responses to 1st Round Written Questions (estimated)	May 1, 2019
OGS Notifies Vendor of Qualification Status (estimated)	May 22, 2019
Deadline for Submission of 2nd Round Bidder Questions	May 30, 2019
OGS Issues Responses to 2nd Round Written Questions (estimated)	June 6, 2019
Bid Due Date/ Bid Opening Date	June 18, 2019 @ 10:00 am

Estimated Contract Start Date	September 1, 2019

1.4 Minimum Proposer Qualifications

Proposers are advised that the State's intent is to ensure that only responsive, responsible, qualified and reliable contractors enter into a contract to perform the work as defined in this document.

The State considers the following qualifications to be a pre-requisite in order to be considered as a qualified Proposer for the purposes of the solicitation.

Responsive Proposers must meet all the following requirements:

1. Proposer must agree to the terms and conditions contained in the NAESB contract as described in **IFB Appendix C**.
2. Proposer must have contracted with large industrial customer(s) with annual usage greater than 1.5 BCF (Billion Cubic Feet), Co Generator(s) or Utility's as an asset manager of DTI and TGP capacity within the past five years. This shall not include "Slice of System" assets released by the utility to an Energy Service Company (ESCO) for their retail access programs.
3. Proposer must have the ability to trigger forward NYMEX pricing for any size volume and duration when requested pursuant to **Section 2.13 NYMEX Triggering**.
4. Proposer must be an approved shipper on Dominion Transmission Incorporated (DTI).
5. If Proposer elects to use Tier1/Tier 2 pricing, then Proposer must be able to provide any combination of Tier 1 pricing that is requested by OGS.

1.5 Optional Pre-Bid Conference

Bidders are strongly encouraged to attend an optional pre-bid conference that will be held via WebEx on the date and time as indicated in **Section 1.3- Key Events** above. In accordance with State Finance Law §139-j(3)(a)(3), this optional pre-bid conference is covered by the permissible subject matter authorization. A vendor is authorized to speak with representatives other than Designated Contact(s) for the sole purpose of the pre-bid conference (to arrange attendance, during the conduct of the visit and to pose questions). The session will begin with a brief presentation on the project, its scope and goals, and OGS procurement requirements. The conference will conclude with a question & answer period. Note that this process is expected to take an estimated two hours; attendees should prepare accordingly.

IMPORTANT: Bidders wishing to attend the optional pre-bid conference must pre-register *at least* 72 hours in advance via email with the OGS Designated Contact, Lee Amado at Lee.Amado@ogs.ny.gov**.**

The e-mail must include:

1. Legal name of Bidder (Contractor name)
2. Name and title for each person attending
3. E-mail address and telephone number for person to contact regarding any updates to the Mini-Bid

Upon registration, Bidders will receive information necessary to log into WebEx. Each bidder is limited to no more than five WebEx connections to the conference.

NOTE: If there are any questions Bidders would like addressed at the pre-bid conference, Bidders should submit them in writing to the designated contact prior to the conference. Questions are allowed during the pre-bid conference, however, only questions submitted in writing and answered via addendum will be considered official.

Questions during the pre-bid conference will be permitted. **Verbal answers are not official answers.** All questions asked at the conference must be submitted via email to the designated contact for this solicitation no later than the date and time indicated in **Section 1.3 Key Events.** Official answers to all questions will be distributed in the form of an addendum via email to all those who submit a mandatory intent to bid. Only answers provided by addendum are considered official.

1.6 Prequalification to Submit a Bid

Vendors who wish to submit a bid **must** prequalify to do so by sending the items as requested in **Section 3.3** to the designated contact (**Section 1.2**) Lee Amado by the stated deadline in **Section 1.3– Key Events**.

Deadline for prequalification will be as stated in **Section 1.3– Key Events**. Vendors assume sole responsibility for timely receipt of the prequalification materials.

Only vendors who have submitted pre-qualification information will receive updates and responses to questions regarding this IFB and submit bids. Please note, by prequalifying the Contractor is not obligated to submit a bid.

Vendors who have submitted a timely pre-qualification package (see 3.2 & 3.3) will be notified in writing whether they are determined to be qualified or not, on or about the date as stated in **Section 1.3– Key Events**.

1.7 Glossary of Terms

"Buyer" shall mean the New York State Office of General Services.

"**Commissioner**" shall mean the Commissioner of General Services or duly authorized representative.

"Contractor", "Seller", or **"Supplier"** shall mean a successful company awarded a contract pursuant to this IFB.

"FERC" shall mean Federal Energy Regulatory Commission

"Issuing Office" shall mean the Office of General Services Division of Financial Administration.

"Invitation for Bid" or "IFB" shall mean this document**.**

"**Locational Basis Price**" or "**LBP**" shall mean the difference between Dominion South Point adjusted for North Point Receipts and the Henry Hub natural gas price.

"**Proposer**" or "**Bidder**" shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this IFB.

"**OGS**" shall mean the New York State Office of General Services.

"**OSC**" shall mean the New York State Office of the State Comptroller.

"**SASP"** shall mean Sheridan Avenue Steam Plant

The "**State**" shall mean The People of the State of New York, which shall also mean the New York State Office of General Services.

Definitions that apply to the resulting NAESB Contract may be found in IFB Appendix C-Contract

2. Scope of Work

2.1 Scope of Contract

OGS is seeking bids ("Bids") for an AMA ("Asset Manager Arrangement") as more fully set forth below. The selected Contractor shall have the right to optimize the assets ("Assets") subject to satisfying OGS's Gas Supply Requirements.

If the FERC, or other applicable regulatory body shall implement any change in law, rule, regulation, tariff or practice that is binding on Seller or Buyer and materially and adversely affects such party's ability to perform its obligations hereunder, the parties shall negotiate in good faith an amendment to the Transaction Confirmation or take other appropriate action the effect of which is to restore each party, as closely as possible, to its same position as prior to such change. If, within sixty (60) days after the implementation of such change, the parties are unable to agree on such amendment or such other appropriate action, each party will continue to perform its obligations hereunder to the maximum extent possible under the applicable law, rule, regulation, tariff or practice, taking all reasonable steps to mitigate the effect of such change.

2.2 Transportation Asset to be Released

OGS shall release to Contractor the AMA capacity, in accordance with the capacity release regulations of the Federal Energy Regulatory Commission (FERC) and the tariff requirements of Dominion Transmission Inc. (DTI), Service Agreement 200220 having primary receipts at Tennessee Gas Pipeline Zone 5 Marilla and primary deliveries to West Schenectady Station meter no.20520 and National Grid East Gate meter no. 20550. The maximum AMA daily delivery quantity (MDQ) is 4,000 dekatherms (Asset). The AMA Asset shall be released for the Delivery Period September 1, 2019 through October 31, 2023.

The release will be posted by OGS as a zero-demand rate release or, if the pipeline's electronic bulletin board will not accept a zero value, then the smallest value that will be accepted. The release shall be subject to recall in the event that the Contractor fails to meet its gas supply obligation to OGS.

The Parties agree that the transactions hereunder constitute an Asset Management Arrangement (AMA), as defined by FERC in Order No. 712 (as modified and clarified) and in accordance with FERC's rules and regulations, and that the Contractor is acting as an Asset Manager as defined in 18 CFR 2B4.8(h)(3). If it is determined that this transaction does not constitute an AMA, the parties agree to modify the transaction as required while maintaining, to the extent possible, the economics of the transaction. "

2.3 Gas Supply Requirements:

Beginning May 1, 2020, on any day during the period of each May through September of the AMA Release Term, OGS has the right, but not the obligation, to call on a quantity of Gas up to the MDQ at the Delivery Point ("Summer Gas Supply Requirements"). Subject to satisfaction of these Gas Supply Requirements, the Seller shall have the right to optimize the Contract Quantity as stated here in Section 2.

2.4 Asset Management Fee

Subject to the delivery requirements in 2.6 and 2.7 below, Contractor shall have the right to optimize the released capacity for its own account.

In exchange for such right, during the Term, Contractor shall make an adjustment to OGS of a dollar amount that represents a percentage of the monthly DTI Reservation Charge per dekatherm each month.

For example a credited fee of 40% would produce (.40 x $4.1743[1] x 4,000 dt's = $6,678.88 credit /AMA Release per month.

2.5 Reservation Charge

OGS will continue to pay a reservation charge and other fixed costs associated with the Asset directly to DTI. As discussed above in **Section 2.2**, if the release of assets cannot be posted as a zero-reservation rate release, OGS shall reimburse the Contractor for any reservation charges associated with such capacity that the Contractor pays to DTI.

2.6 Variable Transport Charges

During the term of the AMA, the Contractor shall pay DTI tariff variable costs associated with transporting the natural gas to the Delivery Point. For those gas volumes transported to the Delivery Point for purchase hereunder, OGS' purchase price for such delivered volumes shall be set forth as Tier 1 pricing under **Section 2.12.** OGS's purchase price shall not include DTI variable cost incurred in connection with the Contractor's utilization of the Asset for third party transactions.

2.7 Upstream Pipeline Scheduling and Delivery

On each day throughout the Delivery Period the Contractor shall deliver the natural gas requirements daily and shall be required to balance deliveries to conform to actual daily usage at the SASP by first utilizing the assigned Asset under **Section 2.2** to transport the natural gas to the Delivery Point at the Tier 1 commodity price in **Section 2.12**. Incremental natural gas required at the Delivery Point above the Asset will be priced at the Tier 2 commodity price in **Section 2.12** depending on the season.

2.8 Utility Scheduling and Delivery

OGS shall be responsible for completion of any documentation as deemed necessary by National Grid for a Direct Customer that will allow the Contractor to schedule and deliver natural gas to the SASP.

The Contractor shall enter into a National Grid Pool Operator Agreement, **IFB Attachment 3**, with OGS and will be responsible for gas supply scheduling, balancing, and settlement activities in accordance with National Grid's requirements including requirements described in Service Classification No.11 of National Grid's Tariff approved through the NYS Public Service Commission. The Contractor shall be responsible for all daily/end of month cash outs as imposed by National Grid.

The Monthly Balancing Charge per therm of Maximum Peak Day Quantity (MPDQ) as set forth on the Statement of Balancing Charges filed with the Public Service Commission will be allowed as a pass through to OGS.

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[1] Reservation Charge Currently in effect as noted in Dominion Energy Transmission, Inc. FT, FTNN, FTSC & IT Rates - Settled Parties, FERC Gas Tariff Tariff Record No. 10.5., Fifth Revised Volume No. 1 Version 2.0.0, Superseding Version 1.0.0

Contractor must comply with the Customer Choice program and any changes to it for mandatory delivery requirements for Daily Balanced Customers per the National Grid Joint Proposal in Cases 17-E-0238 and 17-G-0239. For East Gate deliveries, Daily Balanced Pools Contractor shall operate in accordance with the effective National Grid Gas Transportation Operating Procedures (GTOP) Manual.

2.9 Sheridan Avenue Steam Plant Historical Operations

An operations history of the SASP by year, month and day for purposes of evaluating the value of the AMA and the Requirements of the SASP is provided in **IFB Attachment 4**. Monthly Usage has been provided from January 2009 onward, and Daily Usage has been provided from October 2009 onward.

2.10 Communication Protocol

Anticipated Daily Burn Data- OGS will endeavor to provide the Contractor access to its Web Enabled Advanced Metering System (WEAMS) to access hourly and daily usage to use in intraday needs and forecasting Day Ahead usage at the SASP.

OGS will notify the Contractor as soon as commercially practical of any changes to its expected nominations and or natural gas consumption due to anticipated maintenance or plant modification that may affect the nomination of gas.

2.11 Compensatory Liability

In the event that the contractor fails to complete any of the specified services within the timeframe required, OGS reserves the right to have such work completed either by another contractor or with in-house staff. In any such event, the contractor shall be liable to reimburse OGS for all costs incurred to complete the work. OGS further reserves the right to collect such reimbursement from any outstanding payments due to the contractor.

2.12 Supply Requirements Price

Tier 1 pricing shall be in effect for the term of the Agreement for any portion of the AMA MDQ. Designated OGS personnel may select one or a combination of the Tier 1 pricing options below for volumes up to the MDQ.

1.

a. At any time during the month but no later than 6 (six) business days prior to the beginning of the new delivery month OGS may elect to price a portion of the MDQ at the ***Inside FERC Market Report*** Monthly Bidweek Spot Gas Prices under the heading Appalachia, Dominion Appalachia Index.

b. At any time during the month but no later than 6 (six) business days prior to the beginning of the new delivery month OGS may elect to price a portion of the MDQ at the ***Inside FERC Market Report*** Monthly Bidweek Physical Basis Prices under the heading Appalachia, Dominion Appalachia Avg.

c. In accordance with the NYMEX Trigger provisions in **Section 2.13**

d. In the event none of the above options are elected, the monthly pricing up to the MDQ shall be the average of the daily prices as published in **Platt's Gas Daily,**

Daily Price Survey under the heading Daily Price Survey Appalachia, Dominion North Point Midpoint for the day of flow.

e. Selected pricing shall include the applicable DTI variable transport rate (including fuel) to the Delivery Point. The price shall be calculated as follows: (Index Price)/1- DTI Fuel Rate 1.95%) + DTI Usage + ACA.

2. For the period November through March (Winter) each year, the Contractor shall designate in their bid which Tier 2 pricing options identified below will serve as the Primary pricing mechanism for the SASP firm requirements above the MDQ. It is highly encouraged that in instances where the Contractor can source this supply requirements at a lower price than the Primary Pricing Mechanism then OGS will provide for a sharing of the savings at a rate of 70% to the Contractor and 30% to OGS. Calculation of the sharing will be based on the difference between the Primary Pricing Mechanism and the Invoiced amount.

Tier 2 Winter Pricing options:

a. Dominion North Point as published ***in Platts Gas Daily, Daily Price Survey*** under the heading Daily Price Survey Appalachia Midpoint for the day of flow, plus adder to the Deliver Point.
b. Tennessee Zone 6 delivered Midpoint as published in ***Platt's Gas Daily, Daily Price Survey*** under the heading Daily Price Survey Northeast for the day of flow minus a differential for Zone 5 deliveries to Tennessee Gas Pipeline (TGP) South Albany meter number 42091.

NOTE. Evaluation of Winter Bids will consist of the use of Platt's forward price curves dated March 29, 2018 for the two pricing points plus Sellers adder

Tier 2 Summer Pricing sole option (April – October):

a. Dominion North Point as published ***in Platts Gas Daily, Daily Price Survey*** under the heading Daily Price Survey Appalachia Midpoint for the day of flow, plus adder to the Deliver Point.

Index Changes: In the event that (i) an Index used in this Agreement is no longer published, or (ii) a new Index is published that is more representative than the existing index (more proximate to) the receipt and delivery points (New Index), then either party may provide written notice of such event as the Noticing Party and the parties shall then negotiate in good faith to agree upon the appropriate replacement Index.

2.13 NYMEX Trigger

OGS shall have the right to trigger up to the MDQ for any month at an agreed to locational basis price (LBP) that will establish all or a portion of the Tier 1 locational commodity price for the month at Dominion North Point (NP). For purposes of determining the LBP, Contractor and OGS shall mutually agree on a forward basis futures publication that best represents the LBP at Dominion North Point (e.g. CME Group Dominion, South Point Natural Gas (Platts IFERC) Basis Futures Quotes plus a NP differential) http://www.cmegroup.com/trading/energy/natural-gas/dominion-appalachia-natural-gas-basis-swap-futures-platts-iferc.html.

Contractor will use its best efforts to lock in and confirm a triggered NYMEX Price only if the parties agree on a proposed triggered price and Dominion North Point LBP and OGS provides Notification to Contractor prior to 12:00 Noon on the applicable NYMEX contract expiration date

of its desire to purchase the requested volume and duration at the agreed-to proposed triggered price. The Tier1 locational commodity price shall include the LBP plus the triggered price as well as Tariff defined variable and fuel costs for any volumes triggered. "Notification" shall mean transmission between OGS and Contractor by facsimile or e-mail and shall be communicated by OGS to Contractors designee. OGS agrees that such Notification shall constitute OGSs firm irrevocable offer to purchase (i.e. "lock-in") at the proposed triggered price plus LBP for the term, volume, and fixed price as set forth in the Notification.

If Contractor accepts such offer, Contractor will confirm such Notification by returning a trigger confirmation to OGS via facsimile or e-mail. Triggered volumes are the first volumes delivered to OGS during the month. To provide OGS with a triggered price, Contractor will take positions in the natural gas futures market. Accordingly, OGS agrees to pay any damages suffered by Contractor with respect to such positions as a result of or in connection with OGS terminating the Contract before the end of the term. The pricing provision(s) otherwise applicable under the Contract will be used for untriggered volumes.

If in any month the volume consumed is less than the volume OGS Triggered for that month pursuant to the above, the difference between the consumed volumes and those Triggered (the "Under-Consumed Volumes") shall be settled as follows. All Under-Consumed Volumes shall be priced at the difference between the Trigger Price and the average of all daily prices for that month as published in *Platt's Gas Daily, Daily Price Survey* under the heading Daily Price Survey Appalachia Midpoint Dominion North Point for the day of flow. The difference, whether positive or negative, shall be credited or debited accordingly by the Contractor to OGS on that month's invoice.

Force majeure shall not affect OGS's responsibility for losses related to triggered volumes described above.

2.13.1 Calculation of Tier 1 Commodity Price when triggered

T1P = ∑ (T * V1) + (Indexed Price * V2) /MVT

Where:

- **T1P** = Tier 1 Commodity Price
- **T** = Weighted Average Trigger Price plus LBP plus variable and fuel costs
- **V1** = Triggered Volume
- **V2** = MVT- Triggered Volume (V1)
- **MVT** = Monthly Volume Transported using the assigned asset
- **Indexed Price** = non-triggered monthly pricing selection made under **Section 2.12**Including variable and fuel costs.

3. Bid Submission

3.1 IFB Questions and Clarifications

There will be an opportunity for submission of questions and/or requests for clarification. Questions and/or clarifications must be submitted via email to the Designated Contact:

Lee Amado, Contract Management Specialist 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Email: Lee.Amado@ogs.ny.gov

All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the IFB. The final deadline for submission of any questions/clarifications regarding this IFB is listed in **Section 1.3 – Key Events**. Questions received after the deadline may not be answered. OGS will distribute an addendum with all Questions and Responses to Questions via email on or about the date listed in **Section 1.3 – Key Events**, to the Primary Contact Person for all vendors that have submitted the pre-qualification information. Vendors that have submitted pre-qualification information will also receive any additional updates regarding this IFB, as necessary.

3.2 Preparation of Submissions

All submissions must be completed in ink or machine produced. All documents submitted handwritten in pencil will be disqualified.

3.3 Submission for Pre-Qualification

In order for the State to make a timely award, OGS will pre-qualify interested Bidders. Vendors interested in bidding are required to submit the requested information in this section. Items should be addressed as clearly as possible. Failure to conform to the stated requirements may necessitate rejection of the bid.

3.3.1 Technical Submission

3.3.1.1 Cover Letter

The cover letter should confirm that the Bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, should the contract be awarded to your company, you would be prepared to begin services as indicated in **Section 1.3– Key Events**. The cover letter should include the full contact information of the person(s) OGS shall contact regarding the Bid and must also include the name(s) of principal(s) of the company responsible for this contract, their function, title and number of years of service with company. A Bidder Representative authorized to make contractual obligations must sign the cover letter.

3.3.1.2 Minimum Bidder Qualifications

Bidders must confirm their ability to meet the following minimum qualifications, experience and capabilities to provide services requested in this IFB including the Minimum

Requirements set forth in **Section 1.4**. Evidence supporting Bidder meets minimum qualifications shall include:

1. Bidder must certify that they agree to the terms and conditions contained in the NAESB contract as described in **IFB Appendix C**
2. Bidder must submit NAESB transaction confirmations or other similar documentation for the last five years that demonstrate that their company has contracted with large industrial customer(s), Co Generators or Utilities as an asset manager and managed pipeline assets on both DTI and TGP. This shall not include "Slice of System" assets released by the utility to ESCO's for their retail access customer program. Pricing provisions may be redacted to preserve confidentiality.
3. Bidder must provide an affidavit which certifies that they have Risk Management Governance Policies and Procedures in place with the authority to trigger forward NYMEX pricing for any size volume and duration when requested pursuant to **Section 2.13 - NYMEX Trigger**.
4. Bidder must submit a valid DTI Service Agreement Applicable to the Capacity Release Program "Shell Agreement"
5. If Bidder submits a Tier1/Tier 2 pricing, Bidder must submit an affidavit that they can provide any combination of Tier 1 pricing that is requested by OGS.

3.3.2 Administrative Items

An award will only be made to the entity that has submitted the Bid. All submitted documents must be consistent with official name of proposing entity, FEIN and NYS Vendor ID number.

1. All required completed forms from **IFB Appendix B1**.
    a. A New York State Vendor ID number OR a substitute W-9 form (Please see **Section 5.14- New York State Vendor File Registration**)
    b. A Vendor Responsibility Questionnaire (Please see **Section 5.13- NYS Vendor Responsibility**) Bidders are reminded of the requirement as described in **Section 5.12**, and are required to complete the online or paper questionnaire located on the OSC VendRep System website prior to pre-qualification submission. If the vendor has previously certified responsibility online, it shall ensure that the questionnaire was recertified in the last 6 months.
2. **IFB Attachment 2a** Bid Submission Checklist
3. **M/WBE & EEO Requirements-** Bidders are reminded of the requirements as described in **IFB Appendix E**
4. Insurance – Bidders are required to submit proof of their compliance with NYS Worker's Compensation and NYS Disability Insurance as described in **IFB Appendix D** as well as attest that if they are awarded the contract that they acknowledge the stipulated levels of coverage and will maintain the required insurance levels throughout the life of the contract.
5. Subcontractors- The Bidder must disclose all potential subcontractors and submit a Vendor Responsibility Questionnaire for each subcontractor. Failure to disclose all potential subcontractors in prequalification may result in a delay of award or rejection of a bid.

3.4 Packaging of Pre-Qualification Items

Please submit:

1. Three originals and one exact copy of the Minimum Bidder Qualifications
2. Three originals and one exact copy of the Administrative Proposal

Please provide one digital record (CD or Thumb Drive) containing the above submission items. If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.

Originals contain a unique wet signature for each of the signed and notarized pages. Exact copies can be photocopied and do not require a unique wet signature.

All bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder 's complete name and address
- Solicitation Number – 2146 (Pre-Qualification)
- Prequalification Due Date and Time: (as indicated in **Section 1.3 - Key Events**)
- Asset Manager for Natural Gas Assets

Submit all required Bid documents, to the NYS Office of General Services - Division of Financial Administration at the following address:

OGS Financial Administration, Agency Procurement Office
Empire State Plaza, Corning Tower, 32nd Floor
Albany, NY 12242
Attn: Lee Amado
Bid # 2146- Qualification

3.5 Bid Format and Content (for pre-qualified Bidders)

Bids will only be accepted from vendors who submitted the required prequalification documents (see Section 1.6 and Section 3.3) and who were subsequently notified that they successfully prequalified for this opportunity.

In order for the State to evaluate bids fairly and completely, Bidders are strongly encouraged to follow the format set forth herein and must provide all of the information requested. All items identified in the following list must be addressed for a bid to be considered complete. Items should be addressed as concisely as possible. Failure to conform to the stated requirements may necessitate rejection of the bid.

Bidders are encouraged to include all information that may be deemed pertinent to their bid. Bidders may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Bidder's original bid. If further clarification is needed during the evaluation period, OGS will contact the Bidder.

Note: OGS reserves the right to request any additional information deemed necessary to ensure that the Bidder is able to fulfill the requirements of the contract.

3.5.1 Cost Proposal

Bidder shall submit a completed **Bid Proposal Form (IFB Attachment 1)** using Microsoft Excel spreadsheet provided by OGS to those who have successfully pre-qualified for this procurement. The bid must be completed such that it will indicate a "Valid Bid" once values are placed into the spreadsheet. Bidders may submit multiple offers, using separate Bid Proposal Forms for each offer. Bidders cannot deviate from the Bid Proposal Form. Bidder shall not deviate from the Bid Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the bid.

Once values are deemed valid, Bidders are required to print out three originals of the spreadsheet and have an authorized representative sign and date each original. An exact copy must also be provided in the Bid Submission.

3.5.2 Administrative Proposal

1. All required completed forms from **IFB Appendix B2.**
2. A fully complete and signed **IFB Appendix C**
3. **IFB Attachment 2b Bid Submission Checklist**
4. Signed addenda (if any)
5. Any changes or updates to the Vendor Responsibility Questionnaire.
6. Important Notes:
    a. Document Consistency - An award will only be made to the entity that has submitted the bid. All submitted documents must be consistent with official name of proposing entity, FEIN and NYS Vendor ID number.

3.6 Packaging of IFB Response

Please submit:

1. Three originals and one exact copy of **IFB Attachment 1 – Bid Proposal Form**
2. Three originals and one exact copy of the Administrative Proposal

Please provide one digital record (CD or Thumb Drive) containing the above submission items, that is password protected. Vendors must separately email Lee Amado at Lee.Amado@ogs.ny.gov the password for this file before the Bid Due Date. If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.

Originals contain a unique wet signature for each of the signed and notarized pages. Exact copies can be photocopied and do not require a unique wet signature.

All bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

- Bidder 's complete name and address
- Solicitation Number – 2146
- Bid Due Date and Time: (as indicated in **Section 1.3 - Key Events**)

- Bid for Asset Manager for Natural Gas Assets

Failure to complete all information on the bid envelope and / or packages may necessitate the premature opening of the bid and may compromise confidentiality.

3.7 Instructions for Bid Submission

Note that these instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered.

Submit all required bid documents, to the NYS Office of General Services - Division of Financial Administration at the following address:

OGS Financial Administration, Agency Procurement Office
Empire State Plaza, Corning Tower, 32nd Floor
Albany, NY 12242
Attn: Lee Amado
Bid # 2146

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

Bids must be received in the above office on or before 2:00 PM on the date indicated in **Section 1.3- Key Events**. Bidders assume all risks for timely, properly submitted deliveries. Bidders mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time.

The received time of bids will be determined by the clock at the above noted location.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, or (ii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event will the Commissioner be under any obligation to accept a Late Proposal.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

Bids must remain open and valid for 48 hours from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 48 hour period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This IFB remains the property of the State at all times, and all responses to this IFB, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Bids:

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. **Bidders are encouraged to**

pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to arrival. Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Bidders who intend to deliver bids or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

Visitor parking information can be viewed at the following OGS web site:

http://ogs.ny.gov/BU/BA/Parking/Visitor/

4. Administrative Information

4.1 Issuing Office

This IFB is being released by the New York State Office of General Services Division of Financial Administration on behalf of the OGS Energy Planning and Procurement Division.

4.2 Method of Award

The State intends to award a **single contract** under this solicitation to the lowest responsive and responsible bidder. The lowest bidder shall be determined by the Grand Total Lot as represented on **IFB Attachment 1- Bid Proposal Form**.

Upon determination of the lowest responsive and responsible bid to the nearest ten thousandth place, OGS will countersign the successful Bidder's submitted **IFB Appendix C** and circulate for all necessary State approvals. Upon final approval, a completely executed contract will be delivered to the contractor.

In the event of a tie bid, the winner will be determined by a random draw of names out of a hat or similar vessel.

The Grand Total bid amount of the selected Contractor, shall be used to establish the contract value. The established contract value shall not be exceeded.

4.3 Price

Prices must be submitted using the **IFB Attachment 1- Bid Proposal Form** and follow the Pricing requirements as specified in **Section 2.11**. Submitted bids must follow the format of **IFB Attachment 1- Bid Proposal Form.** Any additions, exceptions, qualifiers, ranges, etc. will result in rejection of the bid. An estimated amount of usage will be used on the Bid Proposal Form for evaluation purposes. Incomplete bids will be rejected. Bidders should insert the price per unit specified and the price extensions in decimals, not to exceed four places.

If the Bidder offers an early payment discount for payments made in less than 30 days after receipt of a proper invoice, please detail the discount by providing, in the appropriate place on the **IFB Attachment 1- Bid Proposal Form**., the percentage of discount and the specific number of days within which the payment must be made for the discount to apply. If Bidder offers multiple discounts, please provide the details for each discount offered (for example: 2%/15 days; 1%/20 days).

4.3.1 Asset Management Fee

Subject to the delivery requirements in **Section 2- Scope** set forth above, the Contractor shall have the right to optimize the released capacity for its own account.

In exchange for such right, during the Term, Contractor shall make a payment to Buyer of a dollar amount per month that represents a percentage of the monthly DTI Reservation Charge per dekatherm per month.

For example a fee of 40% would equal (.40 x $4.1743 x 4,000 dt's (AMA Release) = $6,678.88/month

4.3.2 Alternate Bids

Bidders may submit alternate bids with separate Bid Proposals Forms (**IFB Attachment 1**). Though the Contractor may submit alternate bids depending upon which options they elect, OGS will determine which bid represents the lowest price for the term of the contract.

OGS will accept an optional full requirements bid in addition to the required Tier 1 and Tier 2 pricing. The optional pricing shall be bid as

1. NYMEX plus basis to Delivery Point or
2. Dominion North Point plus basis to Delivery Point.

Contractor is allowed to bid different basis pricing options for each of the 4 years covering the AMA.

Any alternate bid must be clearly be labeled as such.

4.4 Term of Contract

The contract resulting from this IFB will become effective September 1,2019 and will continue through October 31, 2023.

The State of New York retains the right to cancel this contract for convenience, provided that the Contractor is given at least thirty (30) days written notice of NYS OGS' intent to cancel. Any cancellation by NYS OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this IFB and no liability shall be incurred by or arise against NYS OGS, its agents and employees therefore for lost profits or any other damages resulting there from. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. See **Section 5.12 - Termination**.

4.5 Method of Payment

For the purposes of this contract, payment will be based on an itemized invoice of all services performed by the Contractor. Upon satisfactory completion, inspection and approval by Director of Energy Planning and Procurement, an invoice shall be submitted to the OGS Business Services Center – Accounts Payable Unit for payment. Invoice format will jointly be developed to include the information in **Section 4.6** that represent the components of the monthly commodity and delivery transaction.

4.6 Invoicing

All invoices must contain the following:

1. A unique invoice number
2. Contract Number (OGS01-C00XXXX-1140000)
3. Contractor's New York State Supplier ID
4. Purchase Order Number
5. Item Description, which must include line number and descriptions given on the purchase order for the service performed.
6. Specified information relative to payment
    a. Previous balance and payment amount and date
    b. Dates of service covered
    c. Natural gas suppliers' name
    d. Contact POC

e. Commodity Cost with detailed calculation
    i. Triggered vs contract DTs
    ii. Index type(s)
    iii. Index rates
f. Capacity Cost with detailed calculations
    i. Triggered vs contract DTs
    ii. Index type(s)
    iii. Index and adder rates
g. DTI variable transport cost (including fuel) to the Delivery Point
h. Asset Management Fee calculation
i. Total Cost

Invoices that do not contain the above information will be returned to the contractor, and will not be due or owed until a corrected invoice is received.

Invoices will be processed in accordance with established procedures of OGS and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. **Payment will not be issued and will not be due and owing until a corrected invoice is received and approved by OGS**. All Invoices are to be submitted for payment to:

Business Service Center Accounts Payable -or **accountspayable@ogs.ny.gov**
1220 Washington Ave., Building 5, 5th Floor
Albany, NY 12226

Also, a copy of the invoice and reports must be forwarded to the Director of Energy Planning and Procurement.

4.7 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptrollers website at www.osc.state.ny.us/epay/index.htm, by e-mail at epunit@osc.state.ny.us, or by phone at 518-474-4032. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a Statewide Financial System (SFS), the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

4.8 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived said right. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

4.9 Exceptions and Extraneous Terms

The Issuing Office will consider all requests to waive any solicitation requirement. The Term "solicitation requirement" as used herein shall include any and all terms and conditions included in the solicitation documents. Bidders should be aware that failure to obtain a waiver of any bid requirement in advance of bid submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with bid submission, may result in rejection of Bidder's bid and disqualification from the proposing process.

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in **Section 1.3- Key Events**. The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the IFB), or directly to the requesting vendor.

4.10 Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to bid solicitations, contract awards, and contract administration. OGS Financial Administration encourages vendors to seek resolution of disputes informally, through consultation with OGS Financial Administration staff, prior to commencing a formal dispute process. All such matters will be accorded full, impartial and timely consideration. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified in the solicitation.

During the term of the contract, if either party notifies the other of a dispute or dissatisfaction, the other party will make a good faith effort to solve or settle dispute amicably, including meeting with the other party to diligently attempt to reach a satisfactory result. In the event of a dispute, the parties will continue to fulfill their obligations hereunder during the dispute resolution process. The parties agree to proceed in good faith to avoid disputes, and resolve disputes that cannot be avoided at the lowest level possible. If party representatives are unable to resolve the dispute or reach a satisfactory result within twenty days of written notice of a dispute, the dispute will be referred to successive higher levels of each organization for final decision.

4.11 Examination of Contract Documents

1. Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
2. Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the Bidder to fulfill every

detail of all the requirements of the documents governing the work. The Bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Bidder might have fully informed itself prior to proposing.

3. Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Lee Amado, Division of Financial Administration, 32nd Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 e-mail: Lee.Amado@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all Bidder must be informed, such request for interpretation shall be delivered, in writing, no later than question due date listed in **Section 1.3- Key Events.** Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be e-mailed to Bidders who have submitted pre-qualification information prior to the stated due date in **Section 1.3- Key Events**.
4. Any addendum issued prior to the proposal due date must be acknowledged by signature, dated, and be submitted as part of the Administrative Proposal. In awarding a contract, any addenda will become a part thereof.
5. Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents or site shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Bidders shall become a part of the contract.

4.12 Prime Contractor Responsibilities

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the IFB, and the contract resulting from the IFB. No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor(s) who carry out any of the provisions of any contract resulting from this IFB.

4.13 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, a singular word shall include the plural and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this IFB, refer to this IFB.

4.14 Warranties

Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards.

5. Contract Clauses and Requirements

5.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated January 2014, attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein. The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A (dated January 2014)
2. The remainder of Governmental Acquisitions Provisions Addendum NAESB Exhibit 1
3. NYS Office of General Services Invitation For Bid 2146, including any Addenda
4. All other parts of Governmental Acquisitions Provisions Addendum
5. Asset Management Agreement Transaction Confirmation
6. Base Contract for Sale and Purchase of Natural Gas
7. Selected Contractor's Bid including Bid Proposal Form (Attachment 1 of Invitation For Bid 2146)

5.2 Procurement Lobbying Requirement

Pursuant to State Finance Law §139-j and §139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("Restricted Period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). Designated staff, as of the date hereof, is identified on the first page and in **Section 1.2**. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/acpl/

5.3 Sexual Harassment Prevention

Pursuant to N.Y. State Finance Law § 139-l, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a

model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: https://www.ny.gov/combating-sexual-harassment-workplace/employers.

Pursuant to N.Y. State Finance Law § 139-l, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on **Appendix B2 – Required Forms for Bid**, which Bidder must submit with its bid

5.4 Tax and Finance Clause

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than $100,000 to certify to the Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to contracts where the total amount of such contractors' sales delivered into New York State are in excess of $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded $300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this IFB. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Bidders may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site: https://www.tax.ny.gov/

5.5 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid will be held in confidence and details of any bid will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. Should you feel your firm's bid contains any such trade secrets or other confidential or proprietary information, **you must submit a request to except such information from disclosure.** Such request must be in writing, must state the reasons why the information should be excepted from disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a bid from disclosure have generally not been found to be meritorious and are discouraged. Kindly limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm.

5.6 General Requirements

1. The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.
2. The Bidder agrees to notify OGS of any changes in the legal status or principal ownership of the firm, forty-five (45) days in advance of said change.
3. The Bidder agrees that in any contract resulting from this IFB it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.
4. The Bidder agrees that any contract resulting from this IFB may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of OGS.
5. For reasons of safety and public policy, in any contract resulting from this IFB, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.
6. For purposes of any contract resulting from this IFB, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.
7. OGS interpretation of specifications shall be final and binding upon the Contractor.
8. The Commissioner of OGS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.
9. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with OGS.
10. INSPECTION – For purposes of any contract resulting from this IFB the quality of service is subject to inspection and may be made at any reasonable time by the State of New York.

Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, OGS may terminate the contract and employ another Contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

11. STOP WORK ORDER – OGS reserves the right to stop the work covered by this IFB and any contract(s) resulting there from at any time that it is deemed the Contractor is unable or incapable of performing the work to the State's satisfaction. In the event of such stopping, OGS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the Contractor shall be liable to the State of New York for any such costs on account thereof. In the event that OGS issues a stop work order for the work as provided herein, the Contractor shall have ten (10) working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency situation exists, as reasonably determined by OGS, then the stop work order shall be effective immediately.
12. OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

5.7 Contract Terms

All provisions and requirements of Appendix A (dated January 2014) Standard Clauses for New York State Contracts, which is attached hereto and forms a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

All provisions and requirements, which are attached hereto and form a part hereof, will be incorporated into any contract resulting from this IFB, and will be binding upon the parties to such contract.

It is stipulated and agreed by the parties that the law of the State of New York shall solely and in all respects govern with relation to any dispute, litigation, or interpretation arising out of or connected with any contract resulting from this IFB.

Any contract resulting from this IFB shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the Comptroller of the State of New York.

5.8 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. When proposing, any known / planned use of subcontractors must be disclosed in detail with bid submission. If subcontractors are to be used, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this IFB or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this IFB.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the Director of Energy Planning and Procurement, Governor Nelson A. Rockefeller Empire State Plaza, Corning Tower, 32nd Floor, Albany, New York 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Director of Energy Planning and Procurement may require concerning the proposed subcontractor's ability and qualifications.

5.9 Procurement Rights

The State of New York reserves the right to:

1. Reject any and all bids received in response to this Solicitation.
2. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
3. Correct Bidders' mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.
4. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.
5. Utilize any and all ideas submitted in the bids received.
6. Negotiate with Bidders responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.
7. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.
8. Waive any non-material requirement not met by all Bidders.
9. Not make an award from this Solicitation.
10. Make an award under this Solicitation in whole or in part.
11. Make multiple contract awards pursuant to the Solicitation.
12. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.
13. Seek clarifications of bids.
14. Disqualify any Bidder whose conduct and/or bid fails to conform to the requirements of the IFB.
15. Prior to the bid opening, amend the IFB specifications to correct errors or oversights, or to supply additional information, as it becomes available.
16. Waive any requirements that are not material.

Note: The State is not liable for any cost incurred by a Bidder in the preparation and production of a bid or for any work performed prior to the issuance of a contract.

5.10 Extent of Services

OGS reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

5.11 Debriefings

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

5.12 Termination

A) Termination

The Office of General Services may, upon thirty (30) days' notice, terminate the contract resulting from this RFP/IFB in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this RFP/IFB upon ten (10) days' written notice if the Contractor makes any arrangement for the assignment for the benefit of creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this RFP/IFB, or any unit portion thereof, with or without cause, by giving thirty (30) days' written notice of termination to the Contractor.

B) Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

C) Effect of Termination

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this RFP/IFB and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

5.13 NYS Vendor Responsibility

OGS conducts a review of prospective contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon

financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website, https://www.osc.state.ny.us/vendrep/index.htm or to enroll, go directly to the VendRep System online at https://portal.osc.state.ny.us.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at http://www.osc.state.ny.us/portal/contactbuss.htm . Bidders opting to complete the paper questionnaire can access this form and associated definitions via the OSC website at: https://www.osc.state.ny.us/vendrep/forms_vendor.htm .

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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.

The Commissioner of OGS or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this 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. Contract activity may resume at such time as the Commissioner of OGS or her designee issues a written notice authorizing a resumption of performance under the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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 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.

5.14 New York State Vendor File Registration

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller

(OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York. If Bidder is already registered in the New York State Vendor File, list the ten-digit vendor ID number on the Contractor Information page included in **IFB Appendix B1** of this solicitation.

During the Prequalification process as outlined in **Sections 1.6 and 3.3**, the Bidders will be required to submit an OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company and instructions on how to enroll in the online Vendor Self-Service application. For more information on the vendor file please visit the following website: www.osc.state.ny.us/vendors/index.htm
Form to be completed: www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf

5.15 Ethics Compliance

All Bidders/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing any contract resulting from this IFB, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5.16 Encouraging Use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, Bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects Bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

5.17 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://online.ogs.ny.gov/SDVOB/search

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

IFB 2146

Appendix B1 –
Required Forms for Pre-Qualification

Required Forms – Table of Contents

The following required forms are to be submitted for pre-qualification to bid. The forms include:

- ☐ Contractor Information Page
- ☐ Corporate Acknowledgement (must be notarized)
- ☐ ST-220 -TD Taxation & Finance Contractor Certification (Submitted directly to Taxation & Finance)
- ☐ ST-220 -CA Taxation and Finance Covered Agency Certification
- ☐ EEO 100- Equal Employment Opportunity Staffing Plan
- ☐ NYS Substitute W-9 Form (AC 3237-S)
- ☐ NYS Vendor Responsibility Questionnaire (AC 3290-S)

Contractor Information

Solicitation Number

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

Authorized Signature			Date
Print Name		Title	
Company Name			
Federal ID Number		NYS Vendor ID Number	
Address			
City	State	Zip	County
Telephone Number	Ext	Toll Free Telephone	Ext
Fax Number		Toll Free Fax Number	
Email of Designated Contact			

Please identify if any of the following apply:

New York State Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" included in Appendix B herein.	Yes	No
New York State Certified Minority Owned Business	Yes	No
New York State Certified Woman Owned Business	Yes	No
New York State Certified Service-Disabled Veteran-Owned Business	Yes	No
Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?	Yes	No
Will New York State Businesses be used in the performance of this contract?	Yes	No
If yes, identify New York State Business(es) that will be used; (Attach identifying information).		
Does your proposal meet all the requirements of this solicitation?	Yes	No

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }

: SS.:

COUNTY OF }

On the ____ day of _____ in the year 20 ___, before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at

_____,

Town of _____ ,

County of _____ ,

State of _____ ; 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 _____ of _____ , 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.

_____

Notary Public

Registration No._____

State of:_____

NYS Department of Taxation and Finance - FORMS

CONTRACTOR CERTIFICATION (ST-220-TD 12/11)
CONTRACTOR CERTIFICATION TO COVERED AGENCY
(ST-220-CA 12/11)

Department of Taxation and Finance

Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended, effective April 26, 2006)

ST-220-TD

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address *(if different than above)*	City	State	ZIP code

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )

Covered agency address	City	State	ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than $100,000?

Yes ☐ No ☐ Unknown at this time ☐

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency,* certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*

of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make **only one** entry in each section.

Section 1 – Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this ___ day of _____ , 20 ____

_____ _____
(sign before a notary public) *(title)*

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

Column A – Enter ***C*** in column A if the contractor; ***A*** if an affiliate of the contractor; or ***S*** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ____ day of _____ in the year 20__ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_ he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

*(Mark an **X** in the appropriate box and complete the accompanying statement.)*

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of _____ , 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 a _____

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.

_____
Notary Public

Registration No. _____

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				*For covered agency use only* *Contract number or description*
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address *(if different than above)*				*Estimated contract value over the full term of contract (but not including renewals)* $
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)			
Contractor's telephone number	Covered agency name			
Covered agency address				*Covered agency telephone number*

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an **X** *in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ___ day of _____, 20 ____

_____ _____
(sign before a notary public) *(title)*

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ___ day of _____ in the year 20__ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of _____ , 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 a _____

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.

_____
Notary Public

Registration No. _____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

General instructions: Contact the Designated Contact(s) for the solicitation if you have any questions. **All Offerors** must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of OGS.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK - A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN & PACIFIC ISLANDER - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

NEW YORK STATE OF OPPORTUNITY. Office of General Services | Office of Minority and Women-Owned Businesses & Community Relations

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

SUBMIT WITH BID OR PROPOSAL or within a reasonable time thereafter as requested by OGS, but prior to Contract Award.

Solicitation No.:	**Reporting Entity:** ☐ Contractor ☐ Subcontractor	Report includes Contractor's ☐ Contractor's work force to be utilized on this contract ☐ Contractor's total work force ☐ Subcontractor's work force to be utilized on this contract ☐ Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address: **FEIN**:		

Enter the total number of employees for each classification:

EEO Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	American Indian or Alaskan Native (M)	American Indian or Alaskan Native (F)	Veteran (M)	Veteran (F)	(M)	(F)
Executive/Senior level Officials & Managers																	
First/Mid-level officials & Managers																	
Professionals																	
Technicians																	
Sales Workers																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

PREPARED BY (Signature):	**TELEPHONE NO.:** **EMAIL ADDRESS:**	**DATE:**
NAME AND TITLE OF PREPARER (Print or Type):		

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

SUBSTITUTE FORM W-9:

REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION

TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.

Part I: Vendor Information

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:

3. Entity Type (Check one only):

☐ Individual Sole Proprietor ☐ Partnership ☐ Limited Liability Co. ☐ Corporation ☐ Not For Profit

☐ Trusts/Estates ☐ Federal, State or Local Government ☐ Public Authority ☐ Disregarded Entity

☐ Other _____

☐ **Exempt Payee**

Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type

1. Enter your TIN here: *(DO NOT USE DASHES)*
See instructions.

2. Taxpayer Identification Type (check appropriate box):

☐ Employer ID No. (EIN) ☐ Social Security No. (SSN) ☐ Individual Taxpayer ID No. (ITIN) ☐ N/A (Non-United States Business Entity)

Part III: Address

1. Remittance Address:	2. Ordering Address:
Number, Street, and Apartment or Suite Number	Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country
	Email Address

Part IV: Vendor Primary Contact Information – Executive Authorized to Represent the Vendor

Primary Contact Name: _____ Title:_____

Email Address: _____ Phone Number: _____

Part V: Certification and Exemption from Backup Withholding

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (TIN), and
2. I am a U.S. citizen or other U.S. person, and
3. (Check one only):

☐ **I am not subject to backup withholding.** *I am (a) exempt from back up withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding),or*

☐ **I am subject to backup withholding.** *I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to back withholding.*

Sign Here:

_____ Signature

_____ Title

_____ Date

_____ Print Preparer's Name

_____ Phone Number

_____ Email Address

DO NOT SUBMIT FORM TO IRS — SUBMIT FORM TO NYS ONLY AS DIRECTED

NYS Office of the State Comptroller

Instructions for Completing Substitute Form W-9

New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.[1] We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

Part I: Vendor Information

1. **Legal Business Name**: For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type**: Check the Entity Type doing business with New York State.

Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type

The TIN provided must match the name in the "Legal Business Name" box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

Part III: Address

1. Remittance Address: Enter the address where payments, 1099s, if applicable, and official correspondence should be mailed. This will become the default address.
2. Ordering Address: Enter the address where purchase orders should be sent. Please note that purchase orders will be sent via email by default.

Part IV: Vendor Primary Contact Information

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization. Name, phone number and email address are required.

Part V: Certification and Exemption from Backup Withholding

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

[1] According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

COMPLETION & CERTIFICATION

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or officer must certify the questionnaire and the signature must be notarized.

NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at ITServiceDesk@osc.state.ny.us or call 866-370-4672.

DEFINITIONS

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf. These terms may not have their ordinary, common or traditional meanings. Each vendor is strongly encouraged to read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

RESPONSES

Every question must be answered. Each response must provide all relevant information which can be obtained within the limits of the law. However, information regarding a determination or finding made in error which was subsequently corrected is not required. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

REPORTING ENTITY

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

ASSOCIATED ENTITY

An Associated Entity is one that owns or controls the Reporting Entity or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity.

STRUCTURE OF THE QUESTIONNAIRE

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

I. LEGAL BUSINESS ENTITY INFORMATION			
Legal Business Entity Name*		EIN	
Address of the Principal Place of Business (street, city, state, zip code)		New York State Vendor Identification Number	
		Telephone ext.	Fax
Email		Website	

Additional Legal Business Entity Identities: If applicable, list any other DBA, Trade Name, Former Name, Other Identity, or EIN used in the last five (5) years and the status (active or inactive).

Type	Name	EIN	Status

1.0 Legal Business Entity Type – Check appropriate box and provide additional information:	
☐ Corporation (including PC)	Date of Incorporation
☐ Limited Liability Company (LLC or PLLC)	Date of Organization
☐ Partnership (including LLP, LP or General)	Date of Registration or Establishment
☐ Sole Proprietor	How many years in business?
☐ Other	Date Established
If Other, explain:	

1.1 Was the Legal Business Entity formed or incorporated in New York State?	☐ Yes ☐ No

If 'No,' indicate jurisdiction where Legal Business Entity was formed or incorporated and attach a Certificate of Good Standing from the applicable jurisdiction or provide an explanation if a Certificate of Good Standing is not available.

☐ United States State _____

☐ Other Country _____

Explain, if not available:

1.2 Is the Legal Business Entity publicly traded?	☐ Yes ☐ No
If "Yes," provide CIK Code or Ticker Symbol	
1.3 Does the Legal Business Entity have a DUNS Number?	☐ Yes ☐ No
If "Yes," Enter DUNS Number	

*__All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," which can be found at www.osc.state.ny.us/vendrep/documents/questionnaire/definitions.pdf.__

I. LEGAL BUSINESS ENTITY INFORMATION	
1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State? (Select "N/A," if Principal Place of Business is in New York State.)	☐ Yes ☐ No ☐ N/A
If "Yes," provide the address and telephone number for one office located in New York State.	
1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)? If "Yes," check all that apply: ☐ New York State certified Minority-Owned Business Enterprise (MBE) ☐ New York State certified Women-Owned Business Enterprise (WBE) ☐ New York State Small Business (SB) ☐ Federally certified Disadvantaged Business Enterprise (DBE)	☐ Yes ☐ No

1.6 Identify Officials and Principal Owners, if applicable. For each person, include name, title and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional.

Name	Title	Percentage Ownership (*Enter 0% if not applicable*)

II. REPORTING ENTITY INFORMATION

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

☐ Legal Business Entity

Note: If selecting this option, "Reporting Entity" refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)

☐ Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF "REPORTING ENTITY" AND "ORGANIZATIONAL UNIT" FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

Note: If selecting this option, "Reporting Entity" refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)

IDENTIFYING INFORMATION

a) Reporting Entity Name

Address of the Primary Place of Business (street, city, state, zip code)	Telephone ext.

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?	☐ Yes ☐ No

If "Yes," enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.
For each person, include name and title. Attach additional pages if necessary.

Name	Title

INSTRUCTIONS FOR SECTIONS III THROUGH VII

For each "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each "Other," provide an explanation which provides the basis for not definitively responding "Yes" or "No." Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

III. LEADERSHIP INTEGRITY ***Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:***	
3.0 Sanctioned relative to any business or professional permit and/or license?	☐ Yes ☐ No ☐ Other
3.1 Suspended, debarred, or disqualified from any government contracting process?	☐ Yes ☐ No ☐ Other
3.2 The subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business-related conduct?	☐ Yes ☐ No ☐ Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	☐ Yes ☐ No ☐ Other
For each "Yes" or "Other" explain:	

IV. INTEGRITY – CONTRACT BIDDING ***Within the past five (5) years, has the reporting entity*:**	
4.0 Been suspended or debarred from any government contracting process or been disqualified on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, debarment for a violation of New York State Workers' Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	☐ Yes ☐ No
4.1 Been subject to a denial or revocation of a government prequalification?	☐ Yes ☐ No
4.2 Been denied a contract award or had a bid rejected based upon a non-responsibility finding by a government entity?	☐ Yes ☐ No
4.3 Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	☐ Yes ☐ No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a government entity?	☐ Yes ☐ No
4.5 Initiated a request to withdraw a bid submitted to a government entity in lieu of responding to an information request or subsequent to a formal request to appear before the government entity?	☐ Yes ☐ No
For each "Yes," explain:	

V. INTEGRITY – CONTRACT AWARD ***Within the past five (5) years, has the reporting entity*:**	
5.0 Been suspended, cancelled or terminated for cause on any government contract including, but not limited to, a non-responsibility finding?	☐ Yes ☐ No
5.1 Been subject to an administrative proceeding or civil action seeking specific performance or restitution in connection with any government contract?	☐ Yes ☐ No
5.2 Entered into a formal monitoring agreement as a condition of a contract award from a government entity?	☐ Yes ☐ No
For each "Yes," explain:	

VI. CERTIFICATIONS/LICENSES ***Within the past five (5) years, has the reporting entity*:**	
6.0 Had a revocation, suspension or disbarment of any business or professional permit and/or license?	☐ Yes ☐ No
6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise or federal certification of Disadvantaged Business Enterprise status for other than a change of ownership?	☐ Yes ☐ No
For each "Yes," explain:	

VII. LEGAL PROCEEDINGS ***Within the past five (5) years, has the reporting entity*:**	
7.0 Been the subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation?	☐ Yes ☐ No
7.1 Been the subject of an indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime?	☐ Yes ☐ No
7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as serious or willful?	☐ Yes ☐ No
7.3 Had a government entity find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?	☐ Yes ☐ No
7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any government entity involving a violation of federal, state or local environmental laws?	☐ Yes ☐ No
7.5 Other than previously disclosed: a) Been subject to fines or penalties imposed by government entities which in the aggregate total $25,000 or more; or b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any government entity?	☐ Yes ☐ No
For each "Yes," explain:	

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
8.0 Within the past five (5) years, has the Reporting Entity received any formal unsatisfactory performance assessment(s) from any government entity on any contract?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the Reporting Entity had any liquidated damages assessed over $25,000?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any liens or judgments (not including UCC filings) over $25,000 been filed against the Reporting Entity which remain undischarged?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the Reporting Entity initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	☐ Yes ☐ No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the Reporting Entity failed to file or pay any tax returns required by federal, state or local tax laws?	☐ Yes ☐ No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the Reporting Entity failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the Reporting Entity failed to file or pay any New York State unemployment insurance returns?	☐ Yes ☐ No
If "Yes," provide the years the Reporting Entity failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the Reporting Entity had any government audit(s) completed?	☐ Yes ☐ No
a) If "Yes," did any audit of the Reporting Entity identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any material disallowance?	☐ Yes ☐ No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

IX. ASSOCIATED ENTITIES

This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.

(See definition of "associated entity" for additional information to complete this section.)

9.0 Does the Reporting Entity have any Associated Entities? Note: All questions in this section must be answered if the Reporting Entity is either: – An Organizational Unit; or – The entire Legal Business Entity which controls, or is controlled by, any other entity(ies). If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.	☐ Yes ☐ No
9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), the individual involved, his/her title and role in the Associated Entity, his/her relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).	
9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over $50,000?	☐ Yes ☐ No
If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
9.3 Within the past five (5) years, has any Associated Entity:	
a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?	☐ Yes ☐ No
b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?	☐ Yes ☐ No
c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?	☐ Yes ☐ No
d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of $500,000?	☐ Yes ☐ No
e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?	☐ Yes ☐ No
f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?	☐ Yes ☐ No
g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	☐ Yes ☐ No
For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	

X. FREEDOM OF INFORMATION LAW (FOIL)	
10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL). Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.	☐ Yes ☐ No
If "Yes," indicate the question number(s) and explain the basis for the claim.	

XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE		
Name	Telephone ext.	Fax
Title	Email	

Certification

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or Federal Law, as well as a finding of non-responsibility, contract suspension or contract termination.

The undersigned certifies that he/she:

- is knowledgeable about the submitting Business Entity's business and operations;
- has read and understands all of the questions contained in the questionnaire;
- has not altered the content of the questionnaire in any manner;
- has reviewed and/or supplied full and complete responses to each question;
- to the best of his/her knowledge, information and belief, confirms that the Business Entity's responses are true, accurate and complete, including all attachments, if applicable;
- understands that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- is under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official _____

Printed Name of Signatory _____

Title _____

Name of Business _____

Address _____

City, State, Zip _____

Sworn to before me this _____ day of _____, 20___;

_____ Notary Public

IFB 2146

Appendix B2 –
Required Forms for Bid

Required Forms – Table of Contents

The following required forms are to be submitted with your company's bid. The forms include:

- ☐ Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law
- ☐ Offerer Disclosure of Prior Non-Responsibility Determinations
- ☐ Offerer's Certification of Compliance with State Finance Law §139-k(5)
- ☐ NYS Required Certifications
    - Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles
    - Non-Collusive Bidding Certification
    - Diesel Emission Reduction Act
    - Executive Order No 177 Certification
    - State Finance Law § 139-l Certification
    - Small Business Certifications

Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law

§139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract			
Address			
City	State	Zip	
Person Submitting this Form	Title	Date	Contract Procurement Number

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?	No	Yes
If yes, please answer questions 2-4 before proceeding to question 5. If no, please go to question 5.		
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j	No	Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	No	Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Governmental Entity	Date of Finding of Non-responsibility	
Basis of Finding of Non-Responsibility (Add additional pages as necessary)		
5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?	No	Yes
6. If yes, please provide details below.		
Governmental Entity	Date of Termination or Withholding of Contract	
Basis of Termination or Withholding (Add additional pages as necessary)		

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Offerer's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

Offerer Certification: *I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.*			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

NYS REQUIRED CERTIFICATIONS

Nondiscrimination In Employment In Northern Ireland
Macbride Fair Employment Principles

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

1. have business operations in Northern Ireland No Yes , **and if yes**:
2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.
   No Yes

Non-Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

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

In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the certificate as required in accordance with State Finance Law § 139-d(1)(b).

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 contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. 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 Bidder 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.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

State Finance Law § 139-l Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

If the bidder cannot make the foregoing certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification.

Small Business Certifications

State Finance Law § 163(1)(j) (Authorizes Award of Quantitative Factor Credit for Small Business Status in Evaluation for Best Value Contracts)
For purposes of New York State Finance Law § 163(1)(j), the contractor certifies that it:

__ **IS NOT** a Small Business as defined in New York State Executive Law § 310(20).

__ **IS** a Small Business as defined in New York State Executive Law § 310(20).

"Small Business" is defined under New York State Executive Law § 310(20) as a business that:

A. has a significant business presence in New York demonstrated through one of the following:
    1. pays taxes in New York State, or
    2. purchases New York State products or materials, or
    3. has any payroll in New York State
B. is independently owned and operated;
C. is not dominant in its field; and,
D. employs less than 300 persons.

State Finance Law § 163(6) (Authorizes Discretionary Purchases of Commodities or Services from Small Business Concerns)

For purposes of New York State Finance Law § 163(6), the contractor certifies that it:

__ **IS NOT** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

__ **IS** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

"Small Business Concern" or "Small Business" is defined under New York State Finance Law § 160(8) as a business that:

A. is resident in New York State;
B. is independently owned and operated;
C. is not dominant in its field; and
D. employs 100 or less persons.

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 Certifications document and that all information provided is complete, true and accurate.

Authorized Signature		Date	
Print Name		Title	
Company Name			
D/B/A – Doing Business As (if applicable)			
Address			
City	State	Zip	

IFB 2146

Appendix C – Contract

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: September 1, 2019

The parties to this Base Contract are the following:

PARTY A (Asset Manager)	***PARTY NAME***	**PARTY B** New York State Office of General Services (Asset Holder)
	ADDRESS	OGS, 32nd Floor, Corning Tower, ESP, Albany NY 12242
	BUSINESS WEBSITE	www.ogs.ny.gov
	CONTRACT NUMBER	
	D-U-N-S® NUMBER	
☒ US FEDERAL: ☒ OTHER: NYS Vendor ID:	***TAX ID NUMBERS***	☒ US FEDERAL: ☐ OTHER:
NYS, US	***JURISDICTION OF ORGANIZATION***	
☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☐ Other:	***COMPANY TYPE***	☐ Corporation ☐ LLC ☐ Limited Partnership ☐ Partnership ☐ LLP ☒ Other: Governmental
	GUARANTOR **(IF APPLICABLE)**	
Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: ☐ Yes ☐ No ☐ Not Selected	***PARTY CFTC CLASSIFICATION***	Party is a producer, processor, fabricator, refiner, commercial user, or merchandiser of the Gas under this contract: ☒ Yes ☐ No ☐ Not Selected
CONTACT INFORMATION		
ATTN: ***TEL#:*** ***FAX#:*** ***EMAIL:***	▪ ***COMMERCIAL***	***ATTN:*** ***TEL#:*** ***FAX#:*** ***EMAIL:***
ATTN: ***TEL#:*** ***FAX#:*** ***EMAIL:***	▪ ***SCHEDULING***	***ATTN:*** ***TEL#:*** ***FAX#:*** ***EMAIL:***
ATTN: ***TEL#:*** ***FAX#:***	▪ ***CONTRACT AND LEGAL NOTICES***	***ATTN:*** *Lee Amado- CMS I* *Agency Procurement Office- Corning Tower* ***TEL#:*** 518.474-5981 ***FAX#:*** ***EMAIL:*** *Lee.Amado@ogs.ny.gov*

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EMAIL:		
ATTN: ***TEL#:*** ***FAX# :*** ***EMAIL:***	▪ ***CREDIT***	***ATTN:*** ***TEL#:*** ***FAX#:*** ***EMAIL:***
ATTN: ***TEL#:*** ***FAX#:*** ***EMAIL:***	▪ ***TRANSACTION CONFIRMATIONS***	***ATTN:*** ***TEL#:*** ***FAX#:*** ***EMAIL:***

ACCOUNTING INFORMATION

ATTN: ***TEL#:*** ***FAX#:*** ***EMAIL:***	▪ ***INVOICES*** ▪ ***PAYMENTS*** ▪ ***SETTLEMENTS***	***ATTN:*** *Accounts Payable* ***TEL#:*** ***FAX#:*** ***EMAIL:*** accountspayable@ogs.ny.gov
BANK: ***ABA:*** ***ACCT:*** ***OTHER DETAILS:***	***WIRE TRANSFER NUMBERS (IF APPLICABLE)***	***BANK:*** ***ABA:*** ***ACCT:*** ***OTHER DETAILS:***
BANK: ***ABA:*** ***ACCT:*** ***OTHER DETAILS:***	***ACH NUMBERS (IF APPLICABLE)***	***BANK:*** ***ABA:*** ***ACCT:*** ***OTHER DETAILS:***
ATTN: ***ADDRESS:***	***CHECKS (IF APPLICABLE)***	***ATTN:*** ***ADDRESS:***

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Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

Section 1.2 Transaction Procedure
□ Oral (default)
OR
☒ Written

Section 2.7 Confirm Deadline
☒ 2 Business Days after receipt (default)
OR
□ __ Business Days after receipt

Section 2.8 Confirming Party
□ Seller (default)
OR
☒ Buyer
□ _____

Section 3.2 Performance Obligation
☒ Cover Standard (default)
OR
□ Spot Price Standard

Note: The following Spot Price Publication applies to both of the immediately preceding.

Section 2.31 Spot Price Publication
□ Gas Daily Midpoint (default)
OR
☒ see IFB for pricing options

Section 6 Taxes
□ Buyer Pays At and After Delivery Point (default)
OR
☒ Seller Pays Before and At Delivery Point

Section 7.2 Payment Date
☒ **25th Day** of Month following Month of delivery (default)
OR
□ Day of Month following Month of delivery

Section 7.2 Method of Payment
□ Wire transfer (default)
☒ Automated Clearinghouse Credit (ACH)
□ Check

Section 7.7 Netting
☒ Netting applies (default)
OR
□ Netting does not apply

Section 10.2 Additional Events of Default
☒ No Additional Events of Default (default)
□ Indebtedness Cross Default
□ Party A: _____
□ Party B: _____
□ Transactional Cross Default
Specified Transactions:
_____
_____
_____

Section 10.3.1 Early Termination Damages
☒ Early Termination Damages Apply (default)
OR
□ Early Termination Damages Do Not Apply

Section 10.3.2 Other Agreement Setoffs
□ Other Agreement Setoffs Apply (default)
□ Bilateral (default)
□ Triangular
OR
☒ Other Agreement Setoffs Do Not Apply

Section 15.5 Choice Of Law
New York State

Section 15.10 Confidentiality
☒ Confidentiality applies (default)
OR
□ Confidentiality does not apply

□ **Special Provisions** Number of sheets attached: _____
☒ **Addendum(s):** **GAPA Addendum including NYS Appendix A; IFB 2146; this Bidder's Proposal**

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

PARTY A – SELLER / DELIVERING (Asset Manager)	***PARTY NAME***	**PARTY B – BUYER / RECEIVING** New York State Office of General Services (Asset Holder)
By: _____	***SIGNATURE***	By: _____

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	PRINTED NAME	
	TITLE	

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General Terms and Conditions
Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

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2.2. “Affiliate” shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

2.3. “Alternative Damages” shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.

2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.

2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.

2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.

2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.

2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.

2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.

2.13. "Credit Support Obligation(s)” shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.

2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.

2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.

2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.

2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.

2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party’s excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.

2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.

2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.

2.21. “Guarantor” shall mean any entity that has provided a guaranty of the obligations of a party hereunder.

2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

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2.23. “Indebtedness Cross Default” shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.

2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.

2.26. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.

2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.30. “Specified Transaction(s)” shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.

2.31. "Spot Price " as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.33. “Transactional Cross Default” shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.

2.34. “Termination Option” shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the “Cover Standard” or the “Spot Price Standard” as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to

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the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

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SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

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SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause

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(x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall

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include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, neither party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF

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NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the

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employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract , (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.**

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TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.

SELLER:	**BUYER:**
_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	_____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____

Contract Price: $_____/MMBtu or _____

Delivery Period: Begin: _____, ____ End: _____, ____

Performance Obligation and Contract Quantity: (Select One)

Firm (Fixed Quantity):	**Firm (Variable Quantity):**	**Interruptible:**
_____ MMBtus/day ☐ EFP	_____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of ☐ Buyer or ☐ Seller	Up to _____ MMBtus/day

Delivery Point(s): _____
(If a pooling point is used, list a specific geographic and pipeline location):

Special Conditions:

Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____

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Government Acquisition Provisions Addendum
to the
Base Contract for Sale and Purchase of Natural Gas

This Government Acquisition Provisions Addendum ("GAPA") is entered into as of this _____ day of _____, 2018.

The parties to this GAPA are the following:

PARTY A – SELLER / DELIVERING (Asset Manager)	***PARTY NAME***	**PARTY B – BUYER / RECEIVING** New York State Office of General Services (Asset Holder)
	ADDRESS	OGS, 32nd Floor, Corning Tower, ESP, Albany NY 12242
	BASE CONTRACT NUMBER	
	BASE CONTRACT DATE	**September 1, 2019- August 31, 2023**
GAPA RELATED NOTICES (if different from Base Contract)		
	ADDRESS	
	PHONE	
	FAX	
	EMAIL	

IN WITNESS WHEREOF, the parties hereto agree to the terms and conditions herein and have executed this Government Acquisition Provisions Addendum in duplicate.

PARTY A – SELLER / DELIVERING (Asset Manager)	***PARTY NAME***	**PARTY B – BUYER / RECEIVING** New York State Office of General Services (Asset Holder)
By:_____	***SIGNATURE***	By:_____
	PRINTED NAME	Brian Matthews
	TITLE	CFO, OGS

Addendum:

Without limiting the definition of "Base Contract" in Section 2.4 of the Base Contract, the parties agree that this GAPA constitutes an addendum to that certain Base Contract, as identified above, between the parties, and supplements and amends the Base Contract affecting transactions thereunder.

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The parties agree to add the following provisions:

Party A (Seller/Delivering Party) and Party B (Buyer/Receiving Party) are collectively referred to as the "parties." In the event the parties fail to check a box, the default provision for such section shall apply.

APPLICABLE GOVERNMENT ACQUISITION PROVISIONS		
□ Section 17 - Federal Government Acquisition Provisions (default)	***OR***	x Section 18 – Other Government Acquisition Provisions Government Jurisdiction: New York State

SECTION 16. PURPOSE

This GAPA constitutes an Addendum to that certain Base Contract for Sale and Purchase of Natural Gas, as identified above, between the parties ("Base Contract"), and supplements, forms part of, and amends the Base Contract affecting transactions thereunder. Capitalized terms used in this GAPA that are not herein defined will have the meanings ascribed to them in the Base Contract. In the event of a conflict between the terms of this GAPA and the Base Contract, the terms of this GAPA shall apply for the purposes of this GAPA.

SECTION 17. FEDERAL GOVERNMENT ACQUISITION PROVISIONS

17.1. This GAPA is intended to comply with applicable laws and obligations under contracts and/or leases with the United States Federal Government or one of its agencies or subdivisions. This provision is only applicable to the extent that pursuant to the Base Contract one or more transactions is entered into between the parties in support of a Federal Government contract or Federal Lease. Nothing in this provision is intended to create any obligations that do not exist under relevant federal statutes, regulations and/or orders.

17.2. As to all transactions performed hereunder, in whole or in part within the United States of America, as defined by 48 C.F.R. § 2.101, including as applicable, the United States of America's outlying areas, Seller/Delivering Party A agrees that it shall comply with all applicable federal, state and local laws, regulations and orders, including, but not limited to, the following provisions:

- 48 C.F.R. § 52.203-13, "Contractor Code of Business Ethics and Conduct";
- 48 C.F.R. § 52.203-15, "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009";
- 48 C.F.R. § 52.219-8, "Utilization of Small Business Concerns";
- 48 C.F.R. § 52.219-9, "Small Business Subcontracting Plan";
- 48 C.F.R. § 52.222-26, "Equal Opportunity" and 41 C.F.R. § 60-1.4;
- 48 C.F.R. § 52.222-35, "Equal Opportunity for Veterans" and 41 C.F.R. §§ 60-250.5 and 60-300.5;
- 48 C.F.R. § 52.222-36, "Affirmative Action for Workers with Disabilities" and 41 C.F.R. § 60-741.5;
- 48 C.F.R. § 52.222-40, "Notification of Employee Rights Under the National Labor Relations Act"; and
- 48 C.F.R. § 52.222-50, "Combating Trafficking in Persons."

These provisions are incorporated herein by reference and have the same force and effect as if they were given in full text.

17.3. Except as otherwise noted, the effective date and substance of the provisions listed in Section 17.2 shall be the date/substance of the provision incorporated in a party's Federal Government contract or Federal Lease.

17.4. Except where it would otherwise render a provision meaningless or ineffective, the terms "Government" and "Contracting Officer" shall mean Party B (Buyer/Receiving Party and/or the Government) and the term "Contractor" shall mean Party A (Seller/Delivering Party).

17.5. Party A (Seller/Delivering Party) shall, if and to the extent required by applicable laws, regulations and/or orders, incorporate the terms and conditions specified by the aforementioned provisions into every non-exempt subcontract or purchase order related to the Base Contract and this GAPA, so that these terms and conditions will be binding upon each lower-tier subcontractor and sub-vendor.

17.6. Certification Of Nonsegregated Facilities (applicable only to Federal subcontracts/purchase orders in support of Federal Leases): By entering into the Base Contract and this GAPA, Party A (Seller/Delivering Party) certifies, as specified in 41 C.F.R. 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking

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lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Party A (Seller/Delivering Party) further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 41 C.F.R. 60-1.5.

SECTION 18. OTHER GOVERNMENT ACQUISITION PROVISIONS

18.1. This GAPA is intended to comply with applicable laws and obligations under contracts and/or leases with the Government Jurisdiction identified in the preamble to this GAPA. This provision is only applicable to the extent that pursuant to the Base Contract one or more transactions is entered into between the parties in support of a Government Jurisdiction contract or lease. Nothing in this provision is intended to create any obligations that do not exist under relevant Government Jurisdiction, state and local statutes, regulations, ordinances or orders.

18.2. Taxes. If the Buyer is a government entity, then the Buyer is exempt from Federal Excise and Transportation taxes as well as certain other taxes, e.g. state sales taxes. Section 6 of the Base Contract is amended to deny the Seller the ability to pass on or invoice the government Buyer for such taxes. Upon request, the government Buyer shall provide its exemption certificates and federal tax identification number to Seller. Other taxes from which Buyer is exempt include: New York State Sales Tax

18.3. Preemption. The parties agree and acknowledge that the law of the jurisdiction identified in the preamble to this GAPA may provide for a different result for a government party with regards to (i) billing, payments and interest than that in Section 7 of the Base Contract, and (ii) indemnification than that in Section 8 of the Base Contract, and that such law shall preempt the terms of the Base Contract.

18.4. Sovereign Immunity. Nothing in this GAPA or the Base Contract or any action taken shall be construed as waiving or limiting the government party's sovereign immunity.

18.5. Special State and Local Provisions. If there are any special state and local provisions applicable to this GAPA, they are attached hereto, incorporated herein and have the same force and effect as if they were given in full text. Number of sheets attached: -
_____

SECTION 19. GENERAL GAPA PROVISIONS

19.1. Each party will pay its own costs and expenses in connection with performing its obligations under this GAPA and neither party will be liable for any costs or expenses incurred by the other party in connection herewith.

19.2. This GAPA has been and is made solely for the benefit of the parties and their permitted successors and assigns, and no other entity shall acquire or have any right under or by virtue of this GAPA.

19.3. No failure or delay by either party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.4. The headings in this GAPA are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

19.5. Capitalized terms used in this GAPA which are not herein defined will have the meanings ascribed to them in the Base Contract.

19.6. This GAPA is published and copyrighted by the North American Energy Standards Board, Inc.

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The parties agree to add the following provision:

DISCLAIMER: The purposes of this GAPA are to facilitate trade and avoid misunderstandings related to contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this GAPA by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS GAPA ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS GAPA OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS GAPA ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS GAPA.**

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Exhibit 1:
Special State and Local Provisions

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The Government Acquisition Provisions Addendum to the Base Contract for Sale and Purchase of Natural Gas is amended by adding the following provisions thereto:

Delete Section 7.2 of the Base Contract and replace it with the following:

7.2 Where New York State OGS is the Buyer, Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, in accordance with New York State Finance Law Article XI-a.

Delete Section 7.3 of the Base Contract

Delete Section 7.5 of the Base Contract

Delete Section 7.6 of the Base Contract and replace it with the following:
A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

Delete Section 8.3 of the Base Contract and replace it with the following:

8.3 Indemnification
Seller agrees to indemnify New York State OGS as Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage arising out of Seller's performance hereunder and from said gas or other charges thereon which attach before title passes to Buyer. Subject to the availability of lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, OGS shall hold Seller harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent it arises out of this Agreement and is attributable to the negligence of OGS or its officers or employees when acting within the course and scope of their employment.
.

Delete Section 10.4 of the Base Contract and replace it with the following:

10.4 As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due until the date of payment pursuant to New York State Finance Law.

Delete Section 15.1 of the Base Contract and replace it with the following:

15.1 This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder. Notwithstanding the foregoing, New York State Finance Law § 138 applies to this contract.

Delete Section 15.5 and Section 15.6 of the Base Contract and replace them with the following:

15.5 This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

Delete Section 15.10 of the Base Contract and replace it with the following:
15.10 Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially

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all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, including, but not limited to, New York's Freedom of Information Law ("FOIL") set forth at Article 6 of the New York State Public Officers Law ("POL") (ii) to the extent necessary for the enforcement of this Contract , (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

Notwithstanding anything inconsistent in this Section 15.10, Buyer shall treat the terms of any transaction as records that are subject to an assertion by Seller of exemption from disclosure pursuant to POL § 87(2)(d). Should Buyer receive a lawful request for records pursuant to FOIL, Buyer shall make a determination pursuant to POL § 89(5) as to whether the exemption from disclosure shall be granted or continued.

Delete Section 15.11 of the Base Contract

Delete Section 15.12 of the Base Contract

Add the following section to Section 18
18.6 Taxes
The Seller will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

Section 20- NYS Terms and Conditions

20.1 Appendix A / Order of Precedence
Appendix A— Standard Clauses for New York State Contracts, dated January 2014,; OGS IFB # 2146; and Seller's Proposal attached hereto, is hereby expressly made a part of this addendum document as fully as if set forth at length herein. The NAESB Base Contract and all incorporated documents will constitute Contract OGS01- C00XXXX-1140000 and will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A (dated January 2014)
2. The remainder of Governmental Acquisitions Provisions Addendum Exhibit 1
3. NYS Office of General Services Invitation For Bid 2146, including any Addenda
4. All other parts of Governmental Acquisitions Provisions Addendum
5. Asset Management Agreement Transaction Confirmation
6. Base Contract for Sale and Purchase of Natural Gas
7. Seller's Proposal including Bid Proposal Form (Attachment 1 of Invitation for Bid 2146)

20.2 Services
The Seller agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Invitation for Bids No. 2146.

20.4 Independent Contractor
It is understood and agreed that the legal status of the Seller, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

20.5 Conditions Precedent
This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

20.6 Entire Agreement

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This Agreement constitutes 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 this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, and approved by the New York State Attorney General and the New York State Comptroller.

20.7 Executory Clause
This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

20.8 Assignment By State
The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Seller provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an agency are transferred to a successor agency or subdivision of the State.

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

20.10 Severability
In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

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APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

January 2014

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of

any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

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

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00,

whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

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

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded

the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT**. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:
http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

TRANSACTION CONFIRMATION

and Asset Management Arrangement

		Date: September 1, 2019 Transaction Confirmation #: _____

This Transaction Confirmation is subject to the Base Contract between Seller and Buyer, dated _____. This Transaction Confirmation will not become binding until executed by both parties and approved by the Office of Attorney General (OAG) and the Office of the State Comptroller (OSC).

SELLER:	**BUYER:**
_____ _____ _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	New York State Office of General Services Office of General Services/ Financial Administration 32nd Floor, Corning Tower, ESP, Albany NY 12242 Attn: _____ Phone: 518-474-5981 Fax: _____ Base Contract No. OGS01-C00 -1140000 Transporter: _____ Transporter Contract Number: _____

Contract Price: See Special Conditions Section C Below.

Term: Begin: September 1, 2019 **End:** August 31, 2023

The Asset Management Arrangement (AMA) shall commence September 1, 2019 and continue through August 31, 2023 ("AMA Release Term") for the Contract Quantity of 4,000 Dth/day. Buyer (OGS) shall temporarily release to Seller (Contractor) the Contract Quantity. OGS shall release to Contractor the AMA capacity, in accordance with the capacity release regulations of the Federal Energy Regulatory Commission (FERC) and the tariff requirements of Dominion Transmission Inc. (DTI), Service Agreement 200220 having primary receipts at Tennessee Gas Pipeline Zone 5 Marilla and primary deliveries to Brookview Station meter no. 20521 and National Grid East Gate meter no. 20550. The maximum AMA daily delivery quantity is 4,000 dekatherms (Asset). The AMA Asset shall be released for the Delivery Period September 1, 2019 through August 31, 2023.

The release will be posted by OGS as a zero-demand rate release or, if the pipeline's electronic bulletin board will not accept a zero value, then the smallest value that will be accepted. The release shall be subject to recall in the event that the Contractor fails to meet its gas supply obligation to OGS.

Performance Obligation and Contract Quantity: See Special Conditions Below

Delivery Point(s): OGS shall release to Contractor the AMA capacity, in accordance with the capacity release regulations of the Federal Energy Regulatory Commission (FERC) and the tariff requirements of Dominion Transmission Inc. (DTI), Service Agreement 200220 having primary receipts at Tennessee Gas Pipeline Zone 5 Marilla and primary deliveries to West Schenectady Station meter no.20520 and National Grid East Gate meter no. 20550.

Special Conditions:

A. Gas Supply Price:

See IFB Sections 2.11 and 2.12 and Seller's Cost Proposal

B. Scheduling and Delivery

On each day throughout the Delivery Period the Contractor shall deliver the natural gas requirements daily and shall be required to balance deliveries to conform to actual daily usage at the SASP by first utilizing the assigned Asset above to transport the natural gas to the Delivery Point at the Tier 1 commodity price specified under Item A above. Incremental natural gas required at the Delivery Point above the Asset will be priced using the specified Tier 2 commodity price specified in Item A depending on the

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season.

OGS shall be responsible for completion of any documentation as deemed necessary by National Grid for a Direct Customer that will allow the Contractor to schedule and deliver natural gas to the SASP.

The Contractor shall enter into a National Grid Pool Operator Agreement with OGS and will be responsible for gas supply scheduling, balancing, and settlement activities in accordance with National Grid's requirements including requirements described in Service Classification No.11 of National Grid's Tariff approved through the NYS Public Service Commission. The Contractor shall be responsible for all daily/end of month cash outs as imposed by National Grid.

The Monthly Balancing Charge per therm of Maximum Peak Day Quantity (MPDQ) as set forth on the Statement of Balancing Charges filed with the Public Service Commission will be allowed as a pass through to OGS.

Contractor must comply with the Customer Choice program and any changes to it for mandatory delivery requirements for Daily Balanced Customers per the National Grid Joint Proposal in Cases 17-E-0238 and 17-G-0239. For East Gate deliveries, Daily Balanced Pools Contractor shall operate in accordance with the effective National Grid Gas Transportation Operating Procedures (GTOP) Manual.

C. DTI Reservation Charge:

OGS will continue to pay a reservation charge and other fixed costs associated with the Asset directly to DTI. As discussed above in Item A, if the release of assets cannot be posted as a zero-reservation rate release, OGS shall reimburse the Contractor for any reservation charges associated with such capacity that the Contractor pays to DTI.

D. Variable Transport Charges:

During the term of the AMA, the Contractor shall pay DTI tariff variable costs associated with transporting the natural gas to the Delivery Point. For those gas volumes transported to the Delivery Point for purchase hereunder, OGS' purchase price for such delivered volumes shall be set forth as described in Item A above. OGS's purchase price shall not include DTI variable cost incurred in connection with the Contractor's utilization of the Asset for third party transactions

E. Asset Management Fee:

Subject to the delivery requirements in Items B & D above, Contractor shall have the right to optimize the released capacity for its own account.

In exchange for such right, during the Term, Contractor shall make an adjustment to OGS of a dollar amount that represents a percentage of the monthly DTI Reservation Charge per dekatherm each month.

For example a credited fee of 40% would produce (.40 x $4.1743 x 4,000 dt's = $6,678.88 credit /AMA Release per month.

F. Gas Supply Requirements:

Beginning May 1, 2020, on any day during the period of each May through September of the AMA Release Term, Buyer shall have the right, but not the obligation, to call on a quantity of Gas up to the MDQ at the Delivery Point ("Summer Gas Supply Requirements"). Subject to satisfaction of these Gas Supply Requirements, Asset Manager shall have the right to optimize the AMA Quantity for its own account.

Seller to provide 100% or full requirements (Requirement) of OGS' (Buyer) natural gas needs at the SASP. The Requirements will first be a met by the Seller utilizing the asset assigned under the AMA, delivered at the Tier 1 price in **Section 2.12** of the IFB. Additional supply required above the AMA volume will be priced at the Delivery Point at the Tier 2 price in **Section 2.12** of the IFB.

G. Asset Management Arrangement:

The Parties agree that the transactions hereunder constitute an Asset Management Arrangement, as defined by FERC in Order No. 712 (as modified and clarified) and in accordance with FERC's rules and regulations, and that Seller is acting as Asset Manager as defined in 18 CFR 2B4.8(h)(3). If it is determined that this transaction does not constitute an AMA, the parties agree to modify the transaction as required while maintaining, to the extent possible, the economics of the transaction.

H. Changes in Law:

If the FERC, or other applicable regulatory body shall implement any change in law, rule, regulation, tariff or practice that is binding on Seller or Buyer and materially and adversely affects such party's ability to perform its obligations hereunder, the parties shall negotiate in good faith an amendment to this Transaction Confirmation or take other appropriate action the effect of which is to restore each party, as closely as possible, to its same position as prior to such change. If, within sixty (60) days after the implementation of such change, the parties are unable to agree on such amendment or such other appropriate action, each party will continue to perform its obligations hereunder to the maximum extent possible under the applicable law, rule, regulation, tariff or practice, taking all reasonable steps to mitigate the effect of such change on each other.

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Seller: By: _____ Title: _____ Date: _____	Buyer: NEW YORK STATE OFFICE OF GENERAL SERVICES By: _____ Title: _____ Date: _____

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IFB 2146

Appendix D –
Insurance Requirements

Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of all insurance required by Section B below shall be provided in accordance with the provisions hereof;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their 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 required by this Attachment. All insurance required by this Attachment 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 Attachment 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, in 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 insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or 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 the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

***1. Coverage Types and Policy Limits*.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.

3. Certificates of Insurance/Notices. Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name **The New York State Office of General Services, Agency Procurement Office, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: **Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.**

Only original documents (certificates of insurance and any endorsements and other attachments) 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.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. 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 Contractors from submitting the requested insurance documentation.

4. Primary Coverage. Within 30 days of notification of tentative award, all liability 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 the Contract 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 the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the 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 the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract 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. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

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 Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. Waiver of Subrogation. Within 30 days of notification of tentative award, all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in 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, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery 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 the Contract and their officers, agents, and employees or (ii) any other form of permission for the release 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 the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. Additional Insured. Within 30 days of notification of tentative award, the Contractor shall cause to be included in each of the liability policies required below coverage for on-going operations/work naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or

20 38 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): : 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 the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

12. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. 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.

13. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OGS Agency Procurement Office contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall

extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with 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:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	$1,000,000 each occurrence	At time of Submission for Pre-Qualification and updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Medical Expenses Limit	$5,000	
Business Automobile Liability Insurance	$1,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

1. Commercial General Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

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

- Premises liability arising from operations;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

2. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of any automobile used in connection with performance under the Contract, 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.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain 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 the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

3. Workers' Compensation Insurance and Disability Benefits Requirements

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 contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following 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 Workers' Compensation Coverage Requirements:

- 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);

- 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
- 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 Disability Benefits Coverage Requirements:

- 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);
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
- 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.

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or 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 under this section 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 the Office of General Services, its agents and employees therefore for lost profits or any other damages.

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Appendix E –
M/WBE and EEO Requirements

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

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. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS 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. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and all 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 submit the Form EEO-101-Commodities and Services 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 submit the Form EEO-101-Commodities and Services 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 and 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.

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: http://www.ogs.ny.gov/MWBE/Forms.asp

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Attachment 1-
Bid Proposal Form

Bid Proposal Form will be provided to vendors who have pre-qualified.
Please see Section 3.5.1- Cost

IFB 2146

Attachment 2a-
Pre-Qualification Submission Checklist

In order for the State to evaluate bids fairly and completely, Bidders are strongly encouraged to provide all of the information requested.
All Bidders should indicate in the column "Bid Location" the page number of their bid that addresses each stated checklist item.

Pre-Qualification Checklist

Covered by IFB 2146 Section	Checklist Item	Bid Location (pg #)
Technical Submission		
Cover Letter		
Section 3.2.1.1	Did you state in your Cover Letter that you understand all terms and conditions contained in this IFB? Will you comply with all the provisions of	
Sections 1.3 and 3.2.1.1	Have you addressed how your company will be ready to start services in accordance with the date as indicated on Section 1.3 of the IFB?	
Section 3.2.1.1	Did you include the full contact information of your designated contact? Did you include the name of the principal(s) of the company resposible for this contract if awarded including their function, title, and number of years of service with your company?	
Section 3.2.1.1	Did your Representative sign the Cover Letter?	
Minimum Qualifications		
Section 3.2.1.2	Did you confirm your ability to meet minimum qualifications?	
Section 3.2.1.2	Did you certify that you agree to the terms and conditions in the NAESB Contract as described in Appendix C?	
Section 3.2.1.2	Did you submit NAESB transaction confirmations or other similar documentation for the last five years that demonstrate that your company has contracted with large industrial customer(s), Co Generators or Utilities as an asset manager? This shall not include “Slice of System” assets released by the utility to ESCO’s for their retail access customer program. Pricing provisions may be redacted to preserve confidentiality.	
Section 3.2.1.2	Did you provide an affidavit which certifies that your company has Risk Management Governance Policies and Procedures in place with the authority to trigger forward NYMEX pricing for any size volume and duration when requested pursuant to Section 2.12 - NYMEX Trigger?	
Section 3.2.1.2	Did you submit a valid DTI Service Agreement Applicable to the Capacity Release Program “Shell Agreement”?	
Section 3.2.1.2	If your company intends to submit a Tier1/Tier 2 pricing, did you submit an affidavit that your company can provide any combination of Tier 1 pricing that is requested by OGS?	
Administrative Proposal		
Appendix B	Contractor Information Page	
	Corporate Acknowledgement (must be notarized)	

Pre-Qualification Checklist		
	Contractor Certification (ST-220-TD 4/15)	SUBMIT TO NYS DEPARTMENT OF TAXATION & FINANCE ONLY
	Contractor Certification To Covered Agency (ST-220-CA 12/11)	
	EEO 100 Staffing Plan	
	NYS Substitute W-9 Form (AC 3237-S)	
	NYS Vendor Responsibility Questionaire (AC 3290-S)	

One Last Check		
	Did you submit the page number in the column "Bid Location" for each of the criteria above?	
	Did you submit Three Originals each of the Technical Submission and Administrative Requirements? (Originals contain an unique signature on each of the signed pages)	
	Did you submit One Exact Copy each of the Technical Submission and Administrative Items? (Exact Copies can be photocopied and do not require a unique signature)	
	Did you submit one digital copy (thumb drive or CD) of the Technical Submission and Administrative Requirements? If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.	

I certify, with my signature below, that all required information listed above is completed and included in this bid submission.

Authorized Signature: _____

Date: _____

Print Name and Title: _____

Company represented: _____

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Attachment 2b-
Bid Submission Checklist

In order for the State to evaluate bids fairly and completely, Bidders are strongly encouraged to provide all of the information requested.
All Bidders should indicate in the column "Bid Location" the page number of their bid that addresses each stated checklist item.

Bid Checklist

Covered by IFB 2146 Section	Checklist Item	Bid Location (pg #)
Bid Proposal Form		
Attachment 1	Did you check to see if your proposal is valid?	
	Is it signed and dated by your Authorized Representative?	
Administrative Proposal		
Appendix B	Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law	
	Offerer Disclosure of Prior Non-Responsibility Determinations	
	Offerer's Certification of Compliance with State Finance Law §139-k(5)	
	NYS Required Certifications	
Appendix C	Did you fully complete and sign Appendix C of this IFB?	
Addenda	Are all bid addendums signed and included with the bid?	
Vendor Responsibilty Questionnaire	Has there been any changes to the Vendor Responsibility Questionnaire? If so, submit a new Questionnaire with your bid.	
One Last Check		
	Did you submit the page number in the column "Bid Location" for each of the criteria above?	
	Did you submit Three Originals each of the Bid Proposal Form & Administrative Proposal? (Originals contain an unique signature on each of the signed pages)	
	Did you submit One Exact Copy each of the Bid Proposal Form & Administrative Proposal? (Exact Copies can be photocopied and do not require a unique signature)	
	Did you submit one digital copy (thumb drive or CD) of the Bid Proposal Form & Administrative Proposal? If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.	

I certify, with my signature below, that all required information listed above is completed and included in this bid submission.

Authorized Signature: _____

Date: _____

Print Name and Title: _____

Company represented: _____

IFB 2146

Attachment 3 –
National Grid Pool Operator Agreement

Pool Operator Agreement for the SupplierSelect Program

National Grid ("the Company") will permit a Marketer/Direct Customer to enter into a business arrangement with another eligible Marketer or other qualified entity that will act as a Pool Operator on behalf of one or more Marketer(s)/Direct Customer(s) serving retail customers in the Company's ***SupplierSelect*** Program.

By submitting this Form _____(Marketer/Direct Customer) hereby notifies the Company that it has appointed _____ to act as its Pool Operator in scheduling gas supply deliveries to serve its retail customers in accordance with the Company's Tariff, P.S.C. No. 219.

The Marketer's/Direct Customer's utilization of the Pool Operator, and the Pool Operator's right to act on behalf of the Marketer/Direct Customer, is subject to the following terms and conditions:

- The Pool Operator shall be deemed to be acting on behalf of the Marketer/Direct Customer with respect to gas supply scheduling for the duration of its appointment. The Pool Operator is responsible for the performance of all of the Marketer's/Direct Customer's gas supply scheduling, balancing and settlement activities in accordance with the requirements of the Company, including those requirements described in Service Classification No. 11 of the Company's Tariff. Please choose applicable Balancing Program(s):

  _____ Daily Balancing Service

  _____Monthly Balancing Service

- For Monthly Balancing Service, in the event that the Company recalls the capacity and storage, the Marketer and its Pool Operator agrees hereby that the recall is not reputable (i.e., that the Company is recalling such capacity but it is not returning the same release to the Marketer).

- The term of this Agreement shall be one (1) year from the date of execution and shall survive month to month thereafter unless sooner terminated by either party. If Marketer's ***SupplierSelect*** or Monthly Balancing agreements terminate with the Company or DTI, respectively, this agreement shall automatically terminate at the same time.

- Either party may terminate this Agreement upon thirty (30) days written notice to the other for any reason whatsoever.

- The Pool Operator shall submit separate schedules for each Marketer/Direct Customer upon whose behalf it is scheduling, including a separate schedule for itself if it is serving customers in the Company's ***SupplierSelect*** Program. These schedules will form the basis for the calculation of imbalance charges for each entity under the responsibility of the Pool Operator. Imbalances and charges shall be calculated individually for each Marketer/Direct Customer on the basis of these schedules. Payment of these imbalance charges remains the responsibility of each Marketer/Direct Customer as described below.

Pool Operator Agreement for the *SupplierSelect* Program (Con't)

- The Marketer/Direct Customer may authorize the Company to submit bills to the Pool Operator for balancing and settlements for all gas supply deliveries scheduled with the Company on the Marketer's/Direct Customer's behalf. Payments from the Marketer/Direct Customer are due within 20 days from the issuance of the bill. The Marketer/Direct Customer shall retain ultimate payment responsibility for such billings, including late payment charges as applicable.

_____ Bill Pool Operator - Billing Address:_____

_____

_____

_____

_____ Bill Marketer/Direct Customer

- All actions of the Pool Operator related to Marketer's/Direct Customer's participation in the Company's ***SupplierSelect*** Program are absolutely binding on, and attributable to, such Marketer/Direct Customer. The Marketer/Direct Customer is fully liable to the Company for all acts and omissions of the Pool Operator, including failures to comply with the requirements set forth in this Form. The Marketer/Direct Customer shall indemnify, defend and hold harmless the Company from and against any and all claims, losses, damages, as described in the Tariff, that are directly or indirectly caused by, or arise out of, or are in any way connected with the Pool Operator's acts or omissions, whether such claims, losses, and damages are incurred by the Company or by third parties.

- The Company has the right to suspend or terminate the permission granted in this Form, at any time, without any recourse by the Marketer/Direct Customer, in the event the Pool Operator fails to abide by these terms and conditions. Marketer/Direct Customer and the Pool Operator understand and agree that any disputes related to the activities of the Pool Operator are outside the scope of any dispute resolution provisions in the Company's Tariff or in the State of New York Public Service Commission's Orders in connection with NYS Uniform Business Practices.

For MARKETER/DIRECT CUSTOMER:	For POOL OPERATOR:
Name of Firm _____	Name of Firm _____
Name _____	Name_____
Signature _____	Signature_____
Title _____	Title _____
Date _____	Date _____

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Attachment 4-
Sheridan Avenue Steam Plant
Historical Operations Data

source: utility
source: weam since 10/1/2009 **Does not include interruptions**

	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	10 year monthly avg of actual usage
September		100,508	104,668	94,496	102,476	86,086	101,612	117,298	127,727	106,659	117,473	105,900
October		99,682	89,174	90,698	80,486	86,464	86,762	97,642	110,085	87,874	94,938	92,381
November		107,910	107,942	107,618	116,572	117,742	106,363	101,523	117,733	108,169	118,413	110,999
December		133,116	134,676	118,332	112,262	129,560	120,819	113,979	128,810	138,436	125,444	125,543
January	159,227	141,382	149,492	129,486	135,852	153,688	156,698	139,295	127,541	155,939	0	131,691
February	123,506	122,728	127,188	109,256	124,146	135,248	102,058	110,160	106,497	114,325	0	117,511
March	123,910	110,030	117,146	101,624	122,068	135,882	132,686	117,913	127,404	124,039	0	121,270
April	99,696	96,580	96,712	98,014	109,620	88,528	96,291	110,798	95,478	113,394	0	100,511
May	90,472	96,836	90,802	98,388	91,054	83,944	90,158	100,077	92,680	93,990	0	92,840
June	101,397	110,524	102,548	103,410	87,454	94,560	108,421	115,676	107,723	110,996	0	104,271
July	124,882	146,498	137,852	136,706	133,138	118,652	127,074	156,908	125,173	155,431	0	136,231
August	138,828	134,038	133,352	131,470	97,124	107,530	137,641	165,525	127,026	157,542	0	133,008

Daily usage	
Row Labels	Usage DTs
2009	
Oct	99682
01	3638
02	3512
03	2774
04	2732
05	3218
06	3390
07	3244
08	3320
09	2518
10	0
11	0
12	980
13	3676
14	4082
15	4568
16	4332
17	3600
18	3630
19	4154
20	3786
21	3546
22	3350
23	3858
24	3188
25	2994
26	3886
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