



**Office of General Services  
Procurement Services**

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# Invitation for Bids

<b>BID OPENING</b> <b>DATE:</b> August 5, 2020 <b>TIME:</b> 11:00 A.M. EST <b>INVITATION FOR BIDS NUMBER:</b> 23204	<b>TITLE:</b> Group 05700 - Motor Oil, Hydraulic Oil, and Diesel Exhaust Fluid  <b>Classification Codes:</b> 15
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**CONTRACT PERIOD:** Five years with a one (1) year renewal option.

**DESIGNATED CONTACTS:** In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov)

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<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address: \_\_\_\_\_ Company Web Site: \_\_\_\_\_

If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**FOR PROCUREMENT SERVICES USE ONLY**

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	Documented by: _____

## Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State ("NYS") Office of General Services ("OGS"), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS's procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j (3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

\_\_\_\_\_  
Print Full Bidder Entity Name

By:

\_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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# APPENDICES AND ATTACHMENTS

## Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (October 2019)

Appendix B – General Specifications (April 2016)

Appendix C – Contract Modification Procedure

Attachment 1 – Pricing

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Contractor Reseller Distributor Info Sheet

Attachment 10 – Manufacturer's Affidavit of Recycled Content

Attachment 11 – MWBE 100 Utilization Plan

Attachment 12 – MWBE EEO 100 Staffing Plan

## Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation in the following order
  - Attachment 2 – NYS Required Certifications
  - Attachment 4 – Insurance Requirements
  - Attachment 1 – Pricing
  - Attachment 11 – MWBE 100 Utilization Plan
  - Attachment 12 – MWBE EEO 100 Staffing Plan
  - Attachment 5 – Bidder Information Questionnaire
  - Attachment 9 – Contractor Reseller Distributor Info Sheet
  - Attachment 10 – Manufacturer's Affidavit of Recycled Content
  - Attachment 8 – Report of Contract Usage
  - Attachment 6 – Bidder Submission Checklist
  - Attachment 7 – Bidder Questions Form
  - Attachment 3 – Encouraging Use of NYS Businesses

# 1. INTRODUCTION

## 1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for **Motor Oil, Hydraulic Oil, and Diesel Exhaust Fluid** as specified herein for all Authorized Users eligible to purchase through this Solicitation.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

## 1.2 Scope

Contracts resulting from this award will be in effect for a term of up to five (5) years with a one (1) year renewal option. Bidders must be established refiners, authorized distributors or blenders of motor oil from a major refiner’s base stock and must satisfactorily prove to the Office of General Services, upon request, that bidder has adequate facilities to perform all requirements in the event of award.

Award shall be made by individual item within each Lot and zone to the lowest responsive and responsible bidder.. There are three (3) Lots, as further described below and in Sections 1.3.1, 1.3.2 and 1.3.3. There are eleven (11) Zones, as further described in Sections 1.4 and 1.5.

**Lot 1:** This specification describes motor crankcase oil for use in internal combustion engines of both the spark-ignition and the compression-ignition types.

**Lot 2:** This specification describes high-performance hydraulic oil for various equipment including but not limited to snow plowing & material spreader systems, hoisting systems, front-end loaders, aerial devices, excavators, and various other construction devices. The equipment using the oil shall be operable during all weather conditions/extremes.

**Lot 3:** This specification describes Diesel Exhaust Fluid used to assist in the breakdown of NOx into harmless gases.

OGS has established an overall goal of 30% for WBE participation for this Solicitation. Please see Section 6.16 for more detailed information.

## 1.3 Estimated Quantities

The Contract(s) resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor(s) must furnish all quantities actually ordered at or below the Contract prices.

The anticipated dollar value of the award for this Solicitation is based on historical purchases under previous awards for Lot 1 and Lot 2.

The anticipated dollar value of the award for Lot 3 is based on survey results of vendors. For additional information on the survey OGS conducted please see General Information Bulletin – 870, dated February 28, 2020: <https://ogs.ny.gov/news/ci-870>

The approximate values are shown in the chart below:

Lot 1 – Motor Oil

Zone	Estimated Sales per Year
1	\$81,464
2	\$50,815
3	\$23,389
4	\$28,166
5	\$54,350
6	\$17,464
7	\$18,185
8	\$19,845
9	\$33,775
10	\$7,060
11	\$0
Total Annual Sales	\$334,513

Lot 2 – Hydraulic Oil

Zone	Estimated Sales per Year
1	\$30,855
2	\$15,455
3	\$15,455
4	\$6,875
5	\$15,455
6	\$18,865
7	\$32,615
8	\$39,435
9	\$27,445
10	\$37,730
11	No data
Total Annual Sales	\$240,185

Lot 3 – Diesel Exhaust Fluid

The estimated spend for this Lot is \$357,021.00, based on a total of 69,324 gallons. This value is based on the aforementioned survey.

The individual value of each resultant Contract(s) is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under a Contract(s) resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contract(s) may be non-exclusive Contracts;
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases;
- The individual value of each Contract(s) is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract(s) for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract(s).

In OGS Procurement Services' experience, depending on the price of a particular item, the actual volume of purchases for that item could be substantially in excess of, or substantially below, estimated volumes. Specifically, if actual contract pricing is lower than anticipated or historical pricing, actual quantities purchased could be substantially greater than the estimates; conversely, if actual contract pricing is higher than anticipated



or historical pricing, actual quantities purchased could be substantially lower than the estimates. By submitting its bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contract(s) could vary substantially from the estimates provided in this Solicitation.

### Historical Sales Volumes (per year)

Quantities are estimates only and are based on the higher of either the last solicitation amount or the current award's sales report totals, and they are listed for informational purposes only. These quantities are not estimates of future purchasing patterns.

#### 1.3.1 Lot I: Conventional Motor Oil

	<u>ITEM 1A</u>	<u>ITEM 1B</u>	<u>ITEM 1C</u>	<u>ITEM 2A</u>	<u>ITEM 2B</u>	<u>ITEM 2C</u>
<u>ZONE</u>	5W-30, QUART CONTAINERS, gasoline engine	5W-30, 55-GALLON DRUM, gasoline engine	5W-30, BULK in gallons, gasoline engine	5W-20, QUART CONTAINERS, gasoline engine	5W-20, 55-GALLON DRUM, gasoline engine	5W-20, BULK in gallons, gasoline engine
<b>All numbers in this chart are shown in gallons regardless of the container size.</b>						
1	3,643	501	882	150	1,760	0
2	935	55	200	60	1,155	151
3	2,145	88	502	300	715	0
4	1,320	200	673	350	770	0
5	1,705	105	323	231	2,255	481
6	165	55	125	80	440	0
7	1,155	153	125	111	660	0
8	1,528	593	448	630	935	0
9	990	65	130	75	55	0
10	1,665	468	850	400	470	0
11	468	55	425	25	165	0
	<u>ITEM 3A</u>	<u>ITEM 3B</u>	<u>ITEM 3C</u>	<u>ITEM 4A</u>	<u>ITEM 4B</u>	<u>ITEM 4C</u>
<u>ZONE</u>	10W-30, QUART CONTAINERS, diesel engine	10W-30, 55-GALLON CONTAINERS, diesel engine	10W-30, BULK in gallons, diesel engine	15W-40, QUART CONTAINERS, diesel engine	15W-40, 55-GALLON DRUM, diesel engine	15W-40, BULK in gallons, diesel engine
<b>All numbers in this chart are shown in gallons regardless of the container size.</b>						
1	298	3,643	575	93	8,195	4,060
2	43	935	1,000	30	4,620	5,199
3	396	1,418	350	100	1,473	3,735
4	200	1,225	673	20	1,540	4,511
5	225	1,093	323	1,172	3,575	6,521
6	38	165	125	15	825	2,870
7	70	1,088	125	84	2,283	1,238
8	593	1,528	448	863	4,813	3,158
9	65	990	130	10	3,190	4,270
10	468	1,665	408	235	4,620	3,634
11	38	468	75	38	153	63

**1.3.2 Lot II: Hydraulic Oil High Performance- Returnable Drum**

There is no historical data for Zone 11. All numbers shown in gallons.

	ITEM 1
ZONE	55-Gallon Returnable Drums
<b>All numbers in this chart are shown in gallons regardless of the container size.</b>	
1	4,950
2	2,475
3	2,475
4	1,100
5	2,475
6	3,025
7	5,225
8	6,325
9	4,400
10	6,050
11	

**1.3.3 Lot III: Diesel Exhaust Fluid (DEF)**

This data is all from survey results and not from past sales. No estimates are available for zones 3,5,7,8,10, & 11. All numbers shown in gallons.

	ITEM 1
ZONE	55-Gallon Returnable Drums
<b>All numbers in this chart are shown in gallons regardless of the container size.</b>	
1	16,038
2	15,000
3	
4	15,185
5	
6	2,070
7	
8	
9	19,580
10	
11	

### 1.3.4 List of Lots

#### Lot I – Conventional Motor Oil

Item 1A	5W-30, gasoline engine, quart containers
Item 1B	5W-30, gasoline engine, 55-gallon drum
Item 1C	5W-30, gasoline engine, bulk in gallons
Item 2A	5W-20, gasoline engine, quart containers
Item 2B	5W-20, gasoline engine, 55-gallon drum
Item 2C	5W-20, gasoline engine, bulk in gallons
Item 3A	10W-30, gasoline engine, quart containers
Item 3B	10W-30, gasoline engine, 55-gallon drum
Item 3C	10W-30, gasoline engine, bulk in gallons
Item 4A	15W-40, diesel engine, quart containers
Item 4B	15W-40, diesel engine, 55-gallon drums
Item 4C	15W-40, diesel engine, bulk in gallons

#### Lot II – Hydraulic Oil High Performance – Returnable Drum

Item 1	Hydraulic Oil, High Performance in 55-gallon drum
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#### Lot III – Diesel Exhaust Fluid

Item 1A	2.5 Gallon Package
Item 1B	55-Gallon Drum
Item 1C	225-Gallon Container
Item 1D	Bulk in Gallons

1.4 List of Zones

LIST OF COUNTIES IN EACH ZONE

COUNTIES - ZONE NO.

ZONE 1

Albany  
Essex  
Greene  
Rensselaer  
Saratoga  
Schenectady  
Warren  
Washington

ZONE 2

Fulton  
Hamilton  
Herkimer  
Madison  
Montgomery  
Oneida

ZONE 3

Cayuga  
Cortland  
Onondaga  
Oswego  
Seneca  
Tompkins

ZONE 4

Genesee  
Livingston  
Monroe  
Ontario  
Orleans  
Wayne  
Wyoming

ZONE 5

Cattaraugus  
Chautauqua  
Erie  
Niagara

ZONE 6

Allegany  
Chemung  
Schuyler  
Steuben  
Yates

ZONE 7

Clinton  
Franklin  
Jefferson  
Lewis  
St. Lawrence

ZONE 8

Columbia  
Dutchess  
Orange  
Putnam  
Rockland  
Ulster  
Westchester

ZONE 9

Broome  
Chenango  
Delaware  
Otsego  
Schoharie  
Sullivan  
Tioga

ZONE 10

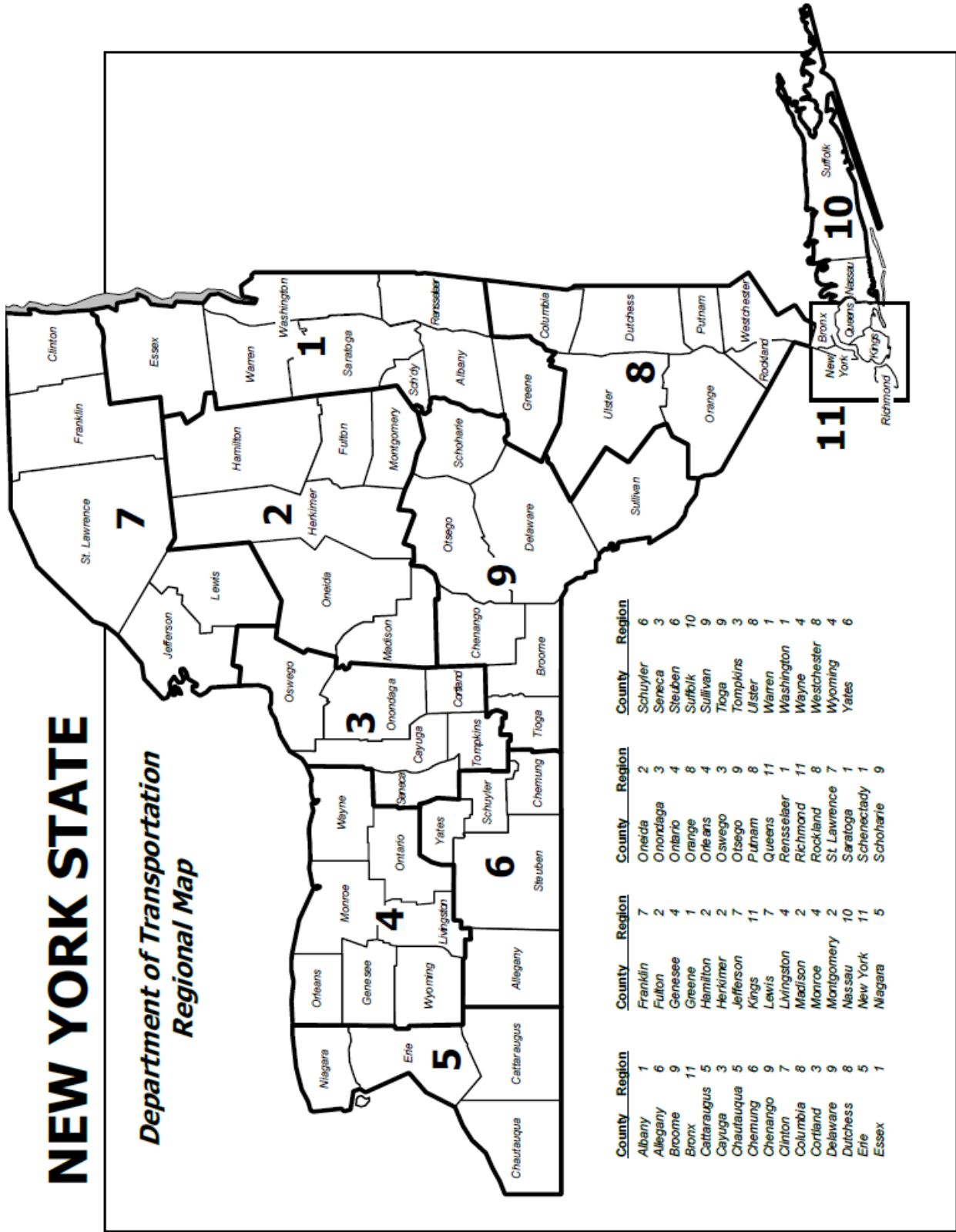
Nassau  
Suffolk

ZONE 11

Bronx  
Kings  
New York  
Queens  
Richmond

Albany	1	Schoharie	9
Allegany	6	Schuyler	6
Bronx	11	Seneca	3
Broome	9	Steuben	6
Cattaraugus	5	St. Lawrence	7
Cayuga	3	Suffolk	10
Chautauqua	5	Sullivan	9
Chemung	6	Tioga	9
Chenango	9	Tompkins	3
Clinton	7	Ulster	8
Columbia	8	Warren	1
Cortland	3	Washington	1
Delaware	9	Wayne	4
Dutchess	8	Westchester	8
Erie	5	Wyoming	4
Essex	1	Yates	6
Franklin	7		
Fulton	2		
Genesee	4		
Greene	1		
Hamilton	2		
Herkimer	2		
Jefferson	7		
Kings	11		
Lewis	7		
Livingston	4		
Madison	2		
Monroe	4		
Montgomery	2		
Nassau	10		
New York	11		
Niagara	5		
Oneida	2		
Onondaga	3		
Ontario	4		
Orange	8		
Orleans	4		
Oswego	3		
Otsego	9		
Putnam	8		
Queens	11		
Rensselaer	1		
Richmond	11		
Rockland	8		
Saratoga	1		
Schenectady	1		

1.5 Map of Zones



**1.6 DOT Regional Shop Addresses, Phone Numbers, Names of Shop Supervisors**

REGION 1	FLEET ADMINISTRATION 21 9TH ST Waterford, NY 12188 CONTACT: <a href="mailto:richard.martin@dot.ny.gov">richard.martin@dot.ny.gov</a> (518 237 5821)
REGION 2	FLEET ADMINISTRATION 10 Harbor Lock Rd W Utica, NY 13502 CONTACT: <a href="mailto:william.laforce@dot.ny.gov">william.laforce@dot.ny.gov</a> (315 733 2967)
REGION 3	FLEET ADMINISTRATION 5450 S Bay Rd North Syracuse, NY 13212-3798 CONTACT: <a href="mailto:bill.chiro@dot.ny.gov">bill.chiro@dot.ny.gov</a> (315 458 7000)
REGION 4	FLEET ADMINISTRATION 2797 Clover St Pittsford, NY 14534-1051 CONTACT: <a href="mailto:ian.scott@dot.ny.gov">ian.scott@dot.ny.gov</a> (585 586 1252)
REGION 5	FLEET ADMINISTRATION 4717 Southwestern Blvd Hamburg, NY 14075-1999 CONTACT: <a href="mailto:james.heintz@dot.ny.gov">james.heintz@dot.ny.gov</a> (716 649 5568)
REGION 6	FLEET ADMINISTRATION 7000 County Route 70A Hornell, NY 14843-9302 CONTACT: <a href="mailto:ron.dabolt@dot.ny.gov">ron.dabolt@dot.ny.gov</a> (607 324 4230)
REGION 7	FLEET ADMINISTRATION 22422 State Route 342 Watertown, NY 13601 CONTACT: <a href="mailto:bruce.johnson@dot.ny.gov">bruce.johnson@dot.ny.gov</a> (315 785 2360)
REGION 8	FLEET ADMINISTRATION 272 Violet Ave Poughkeepsie, NY 12601-1236 CONTACT: <a href="mailto:kevin.chapman@dot.ny.gov">kevin.chapman@dot.ny.gov</a> (845 471 5488)
REGION 9	FLEET ADMINISTRATION 241 Colesville Rd Binghamton, NY 13904 CONTACT: <a href="mailto:richard.boeltz@dot.ny.gov">richard.boeltz@dot.ny.gov</a> (607 775 6053)
REGIONS 10 & 11	FLEET ADMINISTRATION 375 Carleton Ave Central Islip, NY 11722 CONTACT: <a href="mailto:paul.goebeler@dot.ny.gov">paul.goebeler@dot.ny.gov</a> (631 231 6161)

## 1.7 Key Events/Dates

EVENT	DATE	TIME
IFB Release	06/17/2020	N/A
Registration Deadline for Pre-Bid Conference	06/24/2020	Before the Pre-Bid Conference.
Pre-Bid Conference	06/24/2020	TBD
Deadline for Submission of Intent to Bid	06/29/2020	5:00 PM ET
Closing Date for Bidder Questions	07/10/2020	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	07/17/2020	N/A
Bid Opening / Due date for Bids	08/05/2020	11:00 AM ET

## 1.8 Intent to Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov) on or before the date and time indicated in the [Section 1.7 Key Events/Dates section](#). The e-mail should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary.

## 1.9 Pre-Bid Conference

A Pre-Bid conference will be held via Webinar at the time and date indicated in [Section 1.7 Key Events/Dates](#). Bidder participation during the Pre-Bid Conference is not mandatory, but it is recommended that all Bidders participate in the Pre-Bid Conference. A Bidder should register for the Pre-Bid Conference Webinar by following the directions found below in [Section 1.10 WebEx Instructions](#) on or before the "Registration Deadline for Pre-Bid Conference Webinar" date indicated in [Section 1.7 Key Events/Dates](#).

Prospective Bidders may participate in the Pre-Bid Conference via Webinar. The Webinar call in number and website participation instructions will be provided to registered attendees prior to the Pre-Bid Conference. If technological issues arise during the Pre-Bid Conference, participants shall immediately email or call the designated contact. If the technological issues are attributable to the State and cannot be immediately resolved, the Pre-Bid Conference will be re-scheduled.

The purpose of the Pre-Bid Conference is to review Bid submission procedures related to the Solicitation. At the discretion of OGS, materials may be provided prior to the Pre-Bid Conference to the email address(es) submitted with registration. At the discretion of OGS, inquiries submitted either at or prior to the Pre-Bid Conference may be discussed by OGS at the Pre-Bid Conference, however any responses to inquiries made at the Pre-Bid Conference are not binding. Only the written responses in the official response to inquiries posted on the OGS website shall be binding.

## 1.10 WebEx Instructions

It is highly recommended that you or your organization register for this webinar, the webinar will be online only with an audio bridge.

To register for the webinar, the Bidder must:

1. Go to:  
<https://meetny.webex.com/meetny/onstage/g.php?MTID=e971fafc61b70b1ee51802b3cd17c3900>
2. Follow the instructions to register for the meeting.

**Important Notice:** This WebEx service includes a feature that allows audio and any documents and other materials exchanged or viewed during the session to be recorded. By joining this session, you automatically consent to such recordings. If you do not consent to the recording, please do not join the session. Please note that any such recordings may be subject to Freedom of Information Law (FOIL) or discovery in the event of litigation.

To avoid technical difficulties during the webinar, it is highly recommended that Bidders test their WebEx connections prior to the webinar.

### 1.11 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

**If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.**

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

### 1.12 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be e-mailed to [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov) by the date and time indicated in the [Section 1.7 Key Events/Dates section](#). Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the [NYS Contract Reporter \(“NYSCR”\)](#). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See [Bid Deviations](#) for additional information.

### 1.13 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “*Solicitation 23204 MWBE or SDVOB INTEREST\_COMPANY NAME*” to [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov) on or before the Closing Date for Bidder Questions listed in [Section 1.7 ‘Key Events/Dates’](#). The e-mail content should include:

1. Company Name
2. Contact Name and Contact Information such as Phone Number, Mailing Address and E-Mail Address
3. Brief description of the company and the products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures pencils”)
4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB).
5. Include what locations in NYS the company provides services in.

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such e-mail, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

### 1.14 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

“**API**” The acronym, “API” shall be used as a designation for American Petroleum Institute.



**“API Certification Mark”** “Starburst”, designated identify engine oil that meets the latest requirements of ILSAC, currently GF-6 (May 2020). The symbol must be displayed on the front of an oil container.

**“API Service Symbol”** “Donut” that provides oil performance level (API service category or categories), SAE viscosity grade and energy-conserving properties. The symbol must be displayed on the front of an oil container.

**“ASTM”** The acronym, “ASTM” shall be used as a designation for American For Society Testing and Materials.

**“Bidder”** shall refer to any business entity who submits a response to this solicitation. At the time that the Bidder executes a contract with the State for their services, a Bidder shall become a “Contractor.” See also “Contractor.”

**“Bid Deviation”** shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

**“Biodegradable-Hydraulic Oil”** Biodegradability is a measure of the breakdown of a chemical (or a chemical mixture) by micro-organisms. Primary biodegradation is the loss of one or more active groups in a chemical compound that renders the compound inactive regarding a particular function. Primary biodegradation may result in the conversion of a toxic compound into a less toxic or non-toxic compound. Biodegradable-Hydraulic oil is a synthetic fluid that readily breaks down into non-toxic material after use.

**“Business Day”** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS and federal holidays, unless otherwise specified by the Authorized User.

**“CK-4”** API Performance level category designated to meet 2017 model year on-highway and Tier 4 non-road exhaust emission standards as well as for previous model year diesel engines, using diesel fuel with sulfur content up to 500 ppm (0.05% by weight). These oils are especially effective at sustaining emission control system durability where particulate filters and other advanced aftertreatment systems are used. CK-4 oils exceed the performance criteria of API CJ-4 with CI-4 PLUS, and CH-4 and can effectively lubricate engines calling for those Service Categories. The first letter “C” (commercial) represents compression ignition internal combustion engines (diesel engines) oils.

**“Centralized Contract”** shall mean a contract awarded as a result of this Solicitation.

**“Conventional Motor Oil”** this describes motor crankcase oils for use in internal combustion engines of both the spark-ignition and the compression -ignition types.

**“Diesel Exhaust Fluid (DEF)”** is a non-hazardous solution of urea and de-ionized water. DEF is sprayed into the exhaust stream of diesel vehicles to break down dangerous NOx emissions into harmless nitrogen and water. DEF is not a fuel additive and never comes into contact with diesel. It is stored in a separate tank, typically with a flue filler cap.

**“FA-4”** describes certain XW-30 oils specifically formulated for use in select high-speed four-stroke diesel engines designed to meet 2017 model year on-highway greenhouse gas (GHG) emission standards. These oils are formulated for use in on-highway applications with diesel fuel sulfur content up to 15 ppm. Refer to individual engine manufacturer recommendations regarding compatibility with API FA-4 oils.

**“Full Synthetic Motor Oil”** is a lubricant consisting of chemical compounds that are artificially made (synthesized). Synthetic lubricants can be manufactured using chemically modified petroleum components rather than whole crude oil but can also be synthesized from other raw materials.

**“Hydraulic Oil”** describes high-performance oil used for equipment including, but not limited to, snow plowing & material spreader systems, hoisting systems, front-end loaders, aerial devices, excavators, and various other construction devices. The equipment using the oil shall be operable during all weather conditions/extremes.

**“ILSAC”** The acronym, “ILSAC” shall be used as a designation for International Lubricant Standardization and Approval Committee.

**“May”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “Should”.

**“Must”** denotes the imperative in a Contract clause or specification. Means required - being determinative/mandatory, as well as imperative. Also see “Shall” and “Mandatory”

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

**“Procurement Services”** shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPPro”) and Procurement Services Group (“PSG”).

**“Re-Refined Oil”** recycled oil that passes the same cold-start, pumpability, rust-corrosion, engine-wear, and high-temperature viscosity tests that virgin oils do. The API and American Automobile Manufacturers Association (AAMA) have developed the Engine Oil Licensing Certification System (EOLCS) to ensure all engine oils consistently meet performance specifications.

**“Responsive Bidder”** shall mean a Bidder meeting the specifications and requirements of this Solicitation, as determined by the OGS Commissioner.

**“SAE”** The acronym, “SAE” shall be used as a designation for Society of Automotive Engineers, Inc.

**“SDVOB”** shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

**“Shall”** denotes the imperative in a Contract clause or specification. Means required – being determinative/mandatory, as well as imperative. Also see “Must.”

**“Should”** denotes the permissive in a Contract clause or specification. Refers to items or information that the State has deemed are worthy of obtaining, but not required or obligatory. Also see “May.”

**“SP”** API service category (performance level) introduced in May 2020 for all automotive gasoline/propane/CNG engines presently in use, which can be used in place of current SN, SM, SL, and SJ and obsolete SH, SG, SF, SE, SD, SB and SA. The first letter, “s” (Service), represents spark ignition internal combustion engines (gasoline, propane and CNG).

**“State Agency Authorized User”** denotes an Authorized User who is a State Agency, as defined in Executive Law §310(11).

## 2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

A Bidder shall meet the following qualifications:

1. The Bidder must be an established refiner, authorized distributor or blender of motor oil from a major refiner's base stock and must satisfactorily prove to the Office of General Services, upon request, that contractor has adequate facilities to perform all requirements in the event of award. In the event a bid is submitted by other than the refiner, a certificate executed by the refiner may be required stating that the bidder is an authorized dealer of the refiner and that the material offered is completely in compliance with the conditions specified herein. The bidder must also be required to complete the second tab of *Attachment 05 – Bidder Information Questionnaire*.

### 2.1 Proposal Deviations

As set forth in [Section 4.10, Bid Deviations](#), OGS has established a specific process for the submission of extraneous terms and Bid deviations. Any extraneous terms submitted with the Bid shall not be considered part of the Bid or resulting OGS Centralized Contract and shall be disregarded.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (New York State Standard Clauses). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

## 3. SPECIFICATIONS

### 3.1 Lot I – Motor oil for gasoline engines (Items #1A, 1B, 1C, 2A, 2B, 2C, 3A, 3B, and 3C)

The motor oil shall meet the following requirements. Bidders must submit specification sheets for all products bid. OGS reserves the right to request additional information for the purposes of verifying that a product meets the requirements of this section.

Motor oil for gasoline engines shall:

1. Meet the requirements of the major engine/vehicle manufacturers and shall be classified by SAE and API as service category “**SP**”.
2. Have the “ILSAC Certification Mark” [referred to in the trade as the “Starburst”] on its container (when so packaged) and shall be similarly identified (API CERTIFIED FOR GASOLINE ENGINES) on its delivery & invoice documentation. These oils shall meet the engine protection sequence test requirements of ILSAC GF-6.

### 3.2 Lot I – Motor oil for diesel engines (Items #4A, 4B, and 4C)

The motor oil shall meet the following requirements. Bidders must submit specification sheets for all products bid. OGS reserves the right to request additional information for the purposes of verifying that a product meets the requirements of this section.

Motor oil for diesel engines shall:

1. Meet the requirements of the major heavy-duty gasoline and light, medium and heavy-duty diesel engine/vehicle/equipment manufacturers and shall be classified by SAE and API as service category “**CK-4/SN**” or CK-4/SP. Should the awarded product meet CK-4/SN, the contractor may substitute a product meeting “**CK-4/SP**” when it becomes available provided that the pricing is the same or better than the contract pricing for the respective item.

NOTE: The purpose of this Bid is to make a contract available for high quality lubricating oil in classifications and grades that are widely utilized. No recommendation is made herein as to the appropriateness of use of the products offered in any particular vehicle or engine. Authorized Users are advised to check the manufacturer's motor oil recommendations for their vehicles for this information.

### 3.3 Lot II: Oil (Hydraulic), High-Performance All-Temperature, Grade 32

Hydraulic Oil shall be a high-performance all-temperature hydraulic oil used for equipment including but not limited to snow plowing & material spreader systems, hoisting systems, front-end loaders, aerial devices, excavators, and various other construction devices. The equipment using the oil shall be operable during all weather conditions/extremes. The oil shall have superior anti-wear, anti-foam, thermo stability, and water/hydrolytic stability characteristics.

The hydraulic oil shall meet the following requirements: (ASTM references shall read as "or latest revision thereof"). All bidders must submit the product's specification sheet or a letter from the manufacturer certifying that the hydraulic oil offered meets the requirements of this section. The manufacturer's letter must be valid through the terms of the contract. OGS reserves the right to request additional information for the purposes of verifying that a product meets the requirements of this section.

The State reserves the right to consider other testing methods which are considered comparable to a desired performance property required elsewhere herein. The State's decision on same shall be final relative to this solicitation.

**NOTE: Hydraulic oil provided shall contain no particles larger than that which will pass through a 10-micron filter.**

Performance Properties	Primary Test Method(s)	Requirement
ISO Grade (Viscosity)	ASTM D2422-97 (2007) (ISO 3448:1992)	32
Gravity, API	ASTM D287-92 (2006)	29.0, minimum and 37.0, maximum
Viscosity Index	ASTM D2270-10 (ISO 2909:2002)	150, minimum
Flash Point, COC	ASTM D92-05A (2010) (IP 36)	190 degrees Celsius, minimum (374 degrees Fahrenheit)
Fire Point, COC	ASTM D92-05A (2010) (IP 36)	205 degrees Celsius, minimum (400 degrees Fahrenheit)
Pour Point	ASTM D97-08 (IP 15)	-37 degrees Celsius, maximum (-35 degrees Fahrenheit)
Oxidation	ASTM D943-04a (2010) e1	Pass at 2000 hours, minimum
Rust Preventers	ASTM D665-06 (IP 135)	Pass – No visible rust
Hydrolytic Stability	ASTM D2619-09	Pass – Acid Number < 4.0 mg KOH per gram and less than 0.2 mg/cm3 of weight loss
Zinc Content	By specification or suitable testing method	Specified as 'Zinc Free' or tested to show that the product contains 0.04% Zinc by weight, maximum
Anti-Foam	ASTM D892-06 e1 (IP 146)	Pass – 0 ml foam stability at the end of settling time for each phase
Approvals/Recommended Application	Dennison HF-0	Pass
Approvals/Recommended Application	Vickers M-2950-S	Pass
Approvals/Recommended Application	Cincinnati-Machine	P68

#### 3.3.1 Color

The hydraulic oil provided for in Lot 2 shall be colored blue using an oil soluble dyestuff which is completely miscible. The dyestuff shall be added at the factory or distributor/contractor level and shall be reasonably

consistent in shade throughout the product. The degree of this blue shading shall readily distinguish this hydraulic oil from other oils present in the event of (a) leak/s.

### **3.4 Lot III: Diesel Exhaust Fluid**

Diesel exhaust fluid (also referred to as DEF or AUS 32) is injected into the diesel exhaust stream and the heat from the exhaust, the fluid, and a catalyst convert the NOx into the harmless gases.

Diesel exhaust fluid is a 32.5% solution of technically pure urea in purified water. For the Selective Catalytic Reduction (SCR) unit to operate properly, the DEF must meet an exacting purity standard. This standard, published by the International Organization for Standardization (ISO) number 22241-2, is intended to ensure that the diesel exhaust fluid used in SCR-equipped cars and trucks provides the purity required by diesel engine manufacturers and the quality to preserve the emissions control system and the environment.

All DEF provided by the contractors must meet or exceed the ISO 22241-2 standards and have the API Diesel Exhaust Fluid Certification mark. Bidders must submit specification sheets for all products bid.

### **3.5 Returnable Drums**

All 55-gallon and 225-gallon drums shall remain the property of the contractor. The Authorized User shall not retain any empty drums under any circumstance or condition. All drums, including their respective caps, plugs, or bungs shall be returned to the contractor at the contractor's expense, as soon as possible, via most reasonable transport method.

## **4. BID SUBMISSION**

### **4.1 Performance and Bid Bonds**

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

### **4.2 NYS Vendor File Registration**

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, 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, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor 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, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID 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: <https://osc.state.ny.us/contracts/index.htm>.

### 4.3 Format of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 01 - *Pricing* are not acceptable.)

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

### 4.4 Content

A complete Bid consists of the following:

1. One (1) USB flash drives containing:
  - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
  - b. Completed Attachment 01 – Pricing (must be submitted as an Excel file);
  - c. Completed Attachment 02 – NYS Required Certifications with original ink signatures (PDF);
  - d. Completed Attachment 03 – Encouraging Use of NYS Businesses (PDF);
  - e. Proof of compliance with Attachment 04 – Insurance Requirements (PDF);
  - f. Completed Attachment 05 – Bidder Information Questionnaire (Excel);
  - g. Completed Attachment 06 – Bidder Submission Checklist (Excel);
  - h. Completed Attachment 07 – Bidder Questions Form (Excel);
  - i. Completed Attachment 09 – Contractor Reseller Distributor Info Sheet (Word);
  - j. Completed Attachment 10 – Manufacturer's Affidavit of Recycled Content (Word);
  - k. Completed Attachment 11 – MWBE 100 Utilization Plan (Word);
  - l. Completed Attachment 12 – MWBE EEO 100 Staffing Plan (Word);
  - m. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - n. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
  - o. Product Specification Sheets for all items bid on.
  - p. Completed SDVOB100 – Utilization Plan (available at: <https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting#contractor-reporting-forms>)
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
  - a. Pages 1 and 2 of the Solicitation completed and signed (original ink signature);
  - b. Completed Attachment 01 – Pricing;
  - c. Completed Attachment 02 – NYS Required Certifications completed and signed;
  - d. Completed Attachment 03 – Encouraging Use of NYS Businesses completed and signed;
  - e. Proof of compliance with Attachment 04 – Insurance Requirements;
  - f. Completed Attachment 05 – Bidder Information Questionnaire;
  - g. Completed Attachment 06 – Bidder Submission Checklist;
  - h. Completed Attachment 07 – Bidder Questions Form;
  - i. Completed Attachment 09 – Contractor Reseller Distributor Info Sheet;
  - j. Completed Attachment 10 – Manufacturer's Affidavit of Recycled Content completed and signed;
  - k. Completed Attachment 11 – MWBE 100 Utilization Plan;
  - l. Completed Attachment 12 – MWBE EEO 100 Staffing Plan;
  - m. Completed ST-220CA, Contractor Certification, completed, signed, and notarized with original ink signatures;

- n. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online.
- o. Product Specification Sheets for all products bid on.
- p. Completed SDVOB100 – Utilization Plan (available at: <https://ogs.ny.gov/veterans/division-service-disabled-veterans-business-development-compliance-and-reporting#contractor-reporting-forms>)

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

#### 4.5 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23204)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

#### 4.6 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in [Section 1.7 - Key Events/Dates](#):

State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242

**All bids must be delivered to the above address via mail (including overnight delivery services such as UPS and FedEx) only; no hand delivered packages will be allowed for this bid opening.**

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time, but delays may occur. Building access procedures may change or be modified at any time.

#### 4.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 02 – *NYS Required Certifications*) with its Bid.

#### 4.9 Product Literature to Be Furnished with Bid

Bidder shall submit with its Bid detailed specifications, Product literature, and all necessary data on the Product to be furnished (“Product literature”). If the Product offered differs from the Product literature, such differences must be explained in detail. Failure to submit any of the Product literature may result in rejection of the Bid. The State, however, reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

#### 4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract but shall be deemed included for informational or promotional purposes only.

All inquiries concerning this specification will be addressed to one of the following OGS Procurement Services associates and issuing office:

PRIMARY CONTACT	SECONDARY CONTACTS	
Jennifer Prusinowski Contract Management Specialist Telephone: (518) 473-3421 Email: <a href="mailto:Jennifer.Prusinowski@ogs.ny.gov">Jennifer.Prusinowski@ogs.ny.gov</a>	Kelly Rothkopf Contract Management Specialist Telephone: (518) 486-1908 E-mail: <a href="mailto:Kelly.Rothkopf@ogs.ny.gov">Kelly.Rothkopf@ogs.ny.gov</a>	Todd Gardner Contract Management Specialist 3 Telephone: (518) 474-3540 Email: <a href="mailto:Todd.Gardner@ogs.ny.gov">Todd.Gardner@ogs.ny.gov</a>

A Bidder must use Attachment 02 ‘*General Questions*’ to submit questions, comments, Solicitation deviations and/or extraneous terms, and must cite the specific Solicitation document and section number related to the inquiry. Prospective Bidders should note that all clarifications and proposed deviations including those relating to the terms and conditions of the resulting contract(s) are to be resolved prior to the submission of a proposal. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a question and answer document, which will be posted to the OGS website.

Any Contractor in doubt as to the true meaning of any part of the specification or the proposed documents shall submit to the Office of General Services, Procurement Services, 38th Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242, a written request for an interpretation thereof as part of the questions and answer process. If a material change is involved on which all Bidders shall be informed, such will be made available via the New York State Contract Reporter site, to all Bidders, by the date for the close of inquiries stated in [Section 1.7 Key Events/Dates](#). Any clarification of the proposed documents will be made to the relevant document.

Any verbal information obtained from or statements made by representatives of the OGS Procurement Services will not be construed as in any way amending contract documents. Only such documents as are issued in writing to all potential Bidders shall become a part of the resulting Contract(s).



#### 4.11 Electronic Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

#### 4.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

#### 4.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 60 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 60 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### 4.14 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.

- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

#### **4.15 Incorporation**

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

### **5. METHOD OF AWARD**

#### **5.1 Method of Award for Centralized Contract**

Award shall be made by individual item within each Lot and zone to the lowest responsive and responsible bidder.

Bids offering recycled products meeting [Section 5.2 Preference for Recycled Products](#) and [Section 5.3 Recycled Certification](#) will be considered and will be given a pricing preference in accordance with [Section 5.2 Preference for Recycled Products](#).

#### **5.2 Preference for Recycled Products**

In accordance with §165(3) of the State Finance Law, preference will be given for recycled products which comply with the recycled content and recycled certification requirements contained in [Section 5.3](#). Proposed product must also meet all other specifications contained in this solicitation.

If a proposed product complies with the above and is priced not more than 10% above a low bid on products manufactured from virgin materials meeting specifications the award will be made on the lowest-priced recycled product.

#### **5.3 Recycled Content and Certification Requirements**

To qualify for the recycled preference, the Bidder must submit a completed Attachment 10 – *Manufacturer's Affidavit of Recycled Content* with their bid which shows that the product has a minimum percentage by weight of post-consumer material content of 55%. All information requested on the affidavit must be furnished. Failure to supply a completed affidavit as required will result in disqualification for recycled preference.

#### **5.4 Notification of Award**

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

#### **5.5 Bidder Responsibility on Accuracy**

A Bidder is responsible for the accuracy of its Bid. A Bidder is directed to take extreme care in developing their Proposal. A Bidder is cautioned to carefully review their Proposal prior to submittal, as requests for withdrawals of any type are not likely to be granted.

#### **5.6 Periodic Recruitment**

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for items covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

## **6. TERMS AND CONDITIONS**

### **6.1 Contract Term and Extensions**

The Contract will be in effect for a term of up to five years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

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

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State’s option, the Contract may be extended for one (1) year, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

### **6.2 Short term Extension**

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

### **6.3 Summary of Policy and Prohibitions on Procurement Lobbying**

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, are identified on the first page of this Solicitation. 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 State Finance Law §139-j and §139-k. 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 for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>.

## 6.4 Price

Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency including tailgate delivery.

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause. Bids on 55-gallon drums must be on returnable drums only. Non-returnable 55-gallon drums will not be considered for award. No drum deposit charges will be allowed.

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

### 6.4.1 PPI Price Adjustment

Prices will be adjusted every three months of the contract in accordance with the provisions of this clause. The first price adjustment will occur three months after the initial award of the contract and subsequent price adjustments will occur every three months after that. There will be no price adjustments during the first three months of the contract.

The price adjustment will be calculated by multiplying the awarded bid pricing by a 'Price Adjustment Factor' calculated in accordance with the following formula:

$$\text{Price Adjustment Factor} = \frac{\text{(Finalized Monthly PPI Data Three Months prior to the Month of the Adjustment)}}{\text{(Finalized Monthly PPI Data for the Month/Year of the bid opening)}}$$

For Lot 1 – Motor Oil and Lot 2 – Hydraulic Oil, the "Finalized Monthly PPI Data" as used in the "Price Adjustment Factor" formula means the latest finalized monthly PPI data (i.e., data that does not include a "(P)" next to the posted PPI figure) for series ID PCU324191324191 '*PPI industry data for Petroleum lubricating oil and grease mfg., not seasonally adjusted*' published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

For Lot 3 – Diesel Exhaust Fluid, the "Finalized Monthly PPI Data" as used in the "Price Adjustment Factor" formula means the latest finalized monthly PPI data (i.e., data that does not include a "(P)" next to the posted PPI figure) for Product Code 067909 – *Other Miscellaneous Chemical Products*, published by the U.S. Department of Labor, BLS.

The Price Adjustment Factor shall be rounded to the nearest thousandth.

The State reserves the right to modify or correct miscalculations or errors in the PPI Price Adjustment as set forth in this Section.

#### **Example**

The example below is strictly for illustration purposes and may not reflect actual changes in the PPI and any allowable adjustments in price that might occur during the Contract term.

- a) A Price Adjustment calculated on January 1, 2019 for a contract that was awarded in February of 2018:
  - The 'Finalized Monthly PPI Data Three Months prior to the Month of the Adjustment' = 454.5 (October of 2018)
  - The 'Finalized Monthly PPI Data for the Month/Year of the bid opening' = 430.7 (Feb of 2018)
  - The 'Price Adjustment Factor' =  $454.5/430.7 = 1.055$  (rounded to the nearest thousandth)
  - The awarded bid pricing will be multiplied by 1.055 to calculate the adjusted contract pricing.

### 6.4.2 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

## **6.5 Ordering**

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

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

## **6.6 Purchasing Card Orders**

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

## **6.7 Minimum Order**

Lot I:

Minimum order for items by unit of measurement as listed in [Section 1.3.3](#): quarts shall be 12 cases of 12 quarts each (36 total gallons); 55-gallon drums shall be two (2) drums; bulk delivery shall be 150 gallons. Contractor may elect to honor orders for less than the minimum order at no additional cost.

Lot II:

Minimum order shall be one (1) 55-gallon drum.

Lot III:

Minimum order for items by unit of measurement as listed in [Section 1.3.3](#): quarts shall be 12 cases of 12 quarts each (36 total gallons); 55-gallon drums shall be two (2) drums; 225-gallon container shall be one (1) container; bulk delivery shall be 150 gallons. Contractor may elect to honor orders for less than the minimum order at no additional cost.

## 6.8 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information>.

## 6.9 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, §31 Product Delivery and §33 Shipping/Receipt of Product and in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and Appendix B, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS Procurement Services.

Normal deliveries are considered to be Monday thru Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made at the request of the Authorized User and by agreement of the Contractor ONLY.

Contractor must be prepared at all times to make prompt delivery. Contractor may state the maximum time a delivery will take from the moment of order, but the time shall never exceed 30 calendar days.

Failure to deliver within such timeframe may result in an Authorized User's submission of a Contract Performance Report to OGS. In addition to any available remedies per Appendix B, Section 48 Remedies for Breach, (a), (d) and (e), the Authorized User shall have the right to purchase sufficient Motor or Hydraulic Oil or Diesel Exhaust Fluid on the open market and to charge any increase in price paid over the current contract price to the account of the Contractor.

## 6.10 PETROLEUM TRANSFER REQUIREMENTS

For bulk deliveries, Authorized Users shall be responsible for ensuring that tanks or other receptacles are appropriate and accessible to the Contractor and, if necessary, that receiving personnel are available at time of delivery. Failure of the Authorized User to make appropriate delivery arrangements, which prevents the delivery of product upon Contractor's arrival at delivery site, may result in a charge to the Authorized User for the

Contractor's transportation costs. The Contractor must notify the Authorized User of the attempted delivery prior to charging for any future delivery attempts for the same circumstance. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

For bulk deliveries, Contractor shall ensure accurate measurement of quantities delivered. All deliveries must be accompanied by a Delivery Ticket showing Product and Number of Gallons Delivered.

Where applicable, it is the responsibility of the Contractor to conduct deliveries in accordance with petroleum bulk storage (PBS) or other regulations. This may require compliance with unloading/loading provisions of the U.S. Hazardous Material Transportation Standards at 49 CFR part 177.843 as well as the obligation to report spills to the NYSDEC spills hotline and other provisions of the PBS regulation.

#### **6.11 Contract Administration**

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

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### **6.12 NYS Financial System (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### **6.13 Web-Based Ordering**

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

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

## **6.14 Accessibility of Web-Based Information and Applications Policy**

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

## **6.15 Americans with Disabilities Act (ADA)**

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

## **6.16 N.Y. State Finance Law § 139-I – Sexual Harassment**

Pursuant to N.Y. State Finance Law § 139-I, 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-I, 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 Attachment 02 – NYS Required Certifications, which Bidder must submit with its bid.



## 6.17 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 04 – *Insurance Requirements*.

## 6.18 Report of Contract Usage

Contractor shall submit Attachment 08 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 10 days after the close of each calendar quarter*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *quarterly* report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 08 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

## 6.19 MWBE Goals

Contractor Requirements and Procedures for Business Participation Opportunities for NYS 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, liquidated damages

pursuant to clause IX of this section, and/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 any subcontractor.
  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, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic

characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 0% for Minority-Owned Business Enterprises (“MBE”) participation and 30% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. 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.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

#### V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an MWBE Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

#### VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

#### VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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.

#### VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29<sup>th</sup> floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

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

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

**6.20 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 ("SDVOB"), 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 are 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.

I. Contract Goals

- A. OGS hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/Veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the OGS Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.

- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).
- II. SDVOB Utilization Plan
- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their bid.
  - B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to OGS.
  - C. OGS will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of OGS acceptance or issue a notice of deficiency within 20 days of receipt.
  - D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by OGS, a request for a partial or total waiver of SDVOB participation goals on SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal
  - E. OGS may disqualify a Bidder’s bid or proposal as being non-responsive under the following circumstances:
    - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
    - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
    - (c) If a Bidder fails to submit a request for waiver; or
    - (d) If OGS determines that the Bidder has failed to document good faith efforts.
  - F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
  - G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.
- III. Request For Waiver
- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at OGS for guidance
  - B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by OGS at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder’s/Contractor’s waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov).

#### IV. Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified SDVOBs whom OGS determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

#### V. Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 available at <https://ogs.ny.gov/veterans/> and should be completed by the Contractor and submitted to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [Jennifer.Prusinowski@ogs.ny.gov](mailto:Jennifer.Prusinowski@ogs.ny.gov).

#### VI. Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

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



## 6.21 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

## 6.22 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

## 6.23 Surplus/Take-Back/Recycling

I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.

III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>

IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at

<https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### **6.24 Consumer Products Containing Mercury**

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

#### **6.25 Diesel Emission Reduction Act**

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

The Law may be applicable to vehicles used by Contractors "on behalf of" State Agencies and public authorities and require certain reports from Contractors. All heavy-duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The 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.

#### **6.26 Overlapping Contract Products**

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

#### **6.27 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, in addition to all other information the State may obtain from other sources, 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 at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. 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 and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://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, 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, 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 issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the 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 at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the 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.

#### **6.28 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS 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 is 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.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA and the ST-220-TD can be found at [https://www.tax.ny.gov/pubs\\_and\\_bulls/tg\\_bulletins/st/section\\_5a.htm](https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/section_5a.htm) under "Certification requirements."

Contractor should complete and return the certification forms within five (5) 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 Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

#### **6.29 "OGS or Less" Guidelines**

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

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

### **6.30 Service**

Contractor must be prepared at all times to furnish engineering service, when so requested, and to investigate, and report on any complaint that might arise in connection with the use of Contractor’s oils in State equipment.

### **6.31 Testing**

Any product contracted for, as a result of this solicitation, may be subsequently re-tested, at any time during the life of the contract by OGS or the Authorized User, and must prove at that time to equal or exceed the original test results.

### **6.32 Non-State Agencies Participation in Centralized Contracts**

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

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

### **6.33 Extension of Use**

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### **6.34 New Accounts**

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

### **6.35 Centralized Contract Modifications**

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties, subject to all necessary approvals. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

### **6.36 Drug and Alcohol Use Prohibited**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

### **6.37 Traffic Infractions**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.