



**Office of General Services
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Invitation for Bids

Redline; For Information Only; Do not submit with bid

BID OPENING DATE: October 20, 2020 TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23216		TITLE: Group 05602 – Ultra-Low Sulfur Diesel & Biodiesel Fuel (On-Road Use Only) (Statewide) Classification Codes: 15 – Fuels & Lubricants	
CONTRACT PERIOD: November 27, 2020 – August 26, 2021			
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: ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov			
Megan Li Contract Management Specialist Telephone No. (518) 473-8859 E-mail: ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov		Daniel DeBerardinis Team Leader Telephone No. (518) 473-7011 E-mail: ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov	

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<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

If you are not bidding, place an "x" in the box and return this page only. <input type="checkbox"/> 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

- Appendix A – *Standard Clauses for NYS Contracts* (October 2019)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Federal Emergency Management Agency Terms and Conditions*

ATTACHMENTS

- 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 – *Guaranteed Analysis*
- Attachment 10 – *Delivery Schedule – State Agencies*
- Attachment 11 – *Delivery Schedule – Political Subdivisions, Local Governments, & Other*
- Attachment 12 – *MWBE Utilization Plan*
- Attachment 13 – *Intent to Bid*

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for bulk deliveries of ultra-low sulfur (ULS) diesel and biodiesel for on-road use only, 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.

The resulting commodities contract(s) under this one Award will be centralized contracts based on filed requirements. This is a statewide contract. It is the State’s intent to award contracts by Item based on lowest price to responsive and responsible Bidders who are able to meet the terms and conditions of this Solicitation, and who offer the best overall pricing in accordance with the Method of Award clause described herein. The awarded Bidders will be granted a contract for the term and with renewal options as further described herein. Detailed information on the procurement process is set forth in the Method of Award section of this Solicitation.

There are M/WBE goals for this Solicitation, which are specified in the section, *Contractor Requirements and Procedure for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women*, of this Solicitation.

This Solicitation is intended to replace contracts for the six (6) counties from award #23094 that were not renewed. In order to maintain consistency between contracts resulting from this award and the remaining contracts from award #23094, this Solicitation contains terms and conditions (including fuel grades and types) which apply to all counties covered by award #23094; however, only those terms and conditions (including fuel grades and types) which are applicable to the six (6) counties covered by this Solicitation will apply to any resulting contract award.

1.2 Scope

This Solicitation and any resultant contract(s) is intended to provide State and Non-state agencies with a method to procure ULS Diesel Regular, ULS Diesel Premium, B5 Biodiesel, B10 Biodiesel, and B20 Biodiesel fuels by bulk delivery.

Detailed information on the procurement process is set forth in the *Method of Award* section of this Solicitation.

This Solicitation contains a total of twelve (12) Items to be awarded. The items consist of four (4) diesel fuel types (Regular, Premium, B5 Biodiesel, and B20 Biodiesel) in six (6) counties of New York State (Chemung, Monroe, Ontario, Putnam, Steuben, and Wayne), which are specified by Item in Attachment 1 – *Pricing*. A Bidder must furnish its proposed pricing for any fuel type in any county(ies) listed for which it wishes to bid. **A Bidder is not required to bid on every Lot; A Bidder May bid on as few or as many Lots as desired.**

This Solicitation is based on the ultra-low sulfur diesel and biodiesel fuel requirements submitted to OGS by authorized NYS contract users and contains 180 Items that consists of five (5) diesel fuel types (Regular, Premium, B5 Biodiesel, B10 Biodiesel and B20 Biodiesel). All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975-20, Table 1, or latest revision thereof, except as listed differently herein, and ASTM D7467 for Biodiesel Blends (B6 to B20) or latest version thereof. The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users’ storage tanks, as specified herein. The specific users, counties, and fuel grades are listed in the Delivery Schedule. See Attachments 10 and 11, *Delivery Schedule – State Agencies* and *Delivery Schedule – Non-State Agencies* respectively.

The scope of each fuel type is as follows:

1.2.1 Diesel Regular

The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads and speeds. Shall also be known as Regular.

1.2.2 Diesel Premium

The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

1.2.3 B5 Biodiesel

The designation B5 Biodiesel shall refer to a fuel blend containing 5% Biodiesel fuel with 95% Ultra Low Sulfur Diesel Fuel. The intended use of the B5 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

1.2.4 B10 Biodiesel

The designation B10 Biodiesel shall refer to a fuel blend containing 10% Biodiesel fuel with 90% Ultra Low Sulfur Diesel Fuel. The intended use of the B10 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

1.2.5 B20 Biodiesel

The designation B20 Biodiesel shall refer to a fuel blend containing 20% Biodiesel fuel with 80% Ultra Low Sulfur Diesel Fuel. The intended use of the B20 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

NOTE: Prospective users of any of these biofuels are cautioned to carefully read and understand the section titled “Biodiesel Usage Considerations” before deciding to purchase and use these fuels.

1.3 Estimated Quantities

A Contract 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 must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$ 2,814,417.35 annually. The individual value of each resultant Contract 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 resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- 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 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 for cause prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted for purposes of this Solicitation.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with the Delivery Schedules clause, the Contractor(s) shall accept orders from and deliver to any State Agency placing an order through the contract resulting from this Solicitation, even if the State Agency does not appear on the Delivery Schedule at the time of the bid opening. The Contractor(s) may accept orders, at their discretion, for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule at the time of the bid opening

Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	9/14/2020	N/A
Mandatory Intent to Bid Due Date	9/23/2020	5:00 PM ET
Closing Date for Bidder Questions	10/01/2020	5:00 PM ET
OGS Procurement Services' Responses Bidder Questions	10/09/2020	N/A
Bid Opening / Due date for Bids	10/20/2020	11:00 AM ET
Notice of Tentative Award:	11/3/2020	N/A
Contract Approval Date / Award Publish Date	11/25/2020	N/A
Anticipated Contract(s) Begin Date:	11/27/2020	N/A

1.5 Intent to Bid

A Bidder is **required to indicate its intent to bid by sending an e-mail titled “INTENT TO BID – 23216 – [BIDDER NAME]” to ogs.sm.ps_CM_FleetFuelRoads@ogs.ny.gov on or before the date and time indicated in the Key Events/Dates section.** The e-mail should indicate the Bidder’s company name and a contact person and information along with the following documents.

A complete Intent to Bid consists of the following required documents:

1. A signed Attachment 13 – Intent to Bid form;
2. NYS Vendor Responsibility Questionnaire (if hard copy) or a copy of the certification (if filed online) certified within the last 6 months;
3. NYS Workers Compensation and NYS Disability Benefits Insurance coverage as referenced herein;

Failure to submit a complete Intent to Bid may preclude your company from submitting a bid for Solicitation 23216.

1.6 Pre-Bid Conference

There is no pre-bid conference for this Solicitation.

1.7 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.

1.8 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 emailed to ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov by the date and time indicated in the *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.

1.9 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 23216 MWBE or SDVOB INTEREST_COMPANY NAME*” to ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov on or before September 30, 2020 5:00 PM ET. 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 email, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

1.10 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://ogs.ny.gov/acpl/>

1.11 Definitions

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

1D (1-D): The symbols 1D and/or 1-D shall be used as a grade designation for light distillate diesel fuel oils used in vehicular diesel engines and in higher volatility applications than provided by grade 2-D fuel oils. Kerosene (1-K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/solicitation.

2D (2-D): The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having a frequently varying loads and speeds. Shall also be known as Regular.

2PD (2-PD): The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils used in vehicular diesel engines & in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

Agency or Agencies: The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

Authorized User(s): as defined in Appendix B.

ASTM: The acronym “ASTM” shall be used as a designation for ASTM International.

B5: A blend of 5% Biodiesel and 95% petroleum-based diesel fuel.

B10: A blend of 10% Biodiesel and 90% petroleum-based diesel fuel.

B20: A blend of 20% Biodiesel and 80% petroleum-based diesel fuel.

Biodiesel (B100): A fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 (100% Biodiesel fuel) as defined in ASTM D6751-20 or latest version thereof. ASTM D6751-15ce1 covers low sulfur Biodiesel (B100) for use as a blend component with diesel oil fuels.

“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.

“Business Day” shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

“CFPP” shall be used as a designation for the Cold Filter Plugging Point of the fuel.

“Combined Bid Price” shall refer to the weighted combination of a bidder’s 2D and 1D pricing, as calculated in Attachment 1 – *Pricing* for a given County. The bid price for 2D shall be weighted by 66.7%; the bid price for 1D shall be weighted by 33.3%.

“DEC” shall be used as a designation for Department of Environmental Conservation.

“Delivery” shall be the act of taking an ordered product to a person or place. Refer to the *Product Delivery* clause in this Solicitation.

“**Human Needs Customer**” shall refer to a high priority customer, such as residences, hospitals and nursing homes, for which failure to get fuel could be life threatening.

“**IP**” shall be used as a designation for the Institute of Petroleum.

“**LUST**” refers to Leaking Underground Storage Tank

“**May**” denotes the permissive in a Contract clause or specification. “May” does not mean “required.” See also “Shall” and “Must.”

“**Must**” denotes the imperative in a Contract clause or specification. “Must” is synonymous with “required.” See also “Shall” and “May.”

“**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.

“**Posted Day**” and “**Posted Price**” shall refer to the actual day the prices are posted in OPIS publication.

“**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 (“NYSPRO”) and Procurement Services Group (“PSG”).

“**Prompt Delivery**” shall refer to any delivery that is completed within the Contractor’s specified guaranteed delivery time.

“**Prompt Will-call**” shall refer to the time an Authorized User places an order.

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

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required.” See also “Must” and “May.”

“**Volume Discount**” shall refer to the Cents Per Gallon discount for orders 5,500 gallons or greater that a Bidder enters in Attachment 1 – *Pricing*. If no Volume Discount is entered, it will be presumed that the Bidder is not offering a volume discount.

1.12 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 – Federal Emergency Management Agency Terms and Conditions

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 – Guaranteed Analysis
Attachment 10 – Delivery Schedule – State Agencies
Attachment 11 – Delivery Schedule – Political Subdivisions, Local Governments, & Other Eligible Non-State Agencies
Attachment 12 – M/WBE Utilization Plan
Attachment 13 – Intent to Bid

1.13 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;

1.14 NYS Comptroller Approval

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.

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:

EITHER 1a OR 1b:

- 1a. The Bidder must either own or operate a permanently established bulk storage plant with stationary tankage from which delivery will be made.

- 1b. The Bidder must be an established refiner, distributor, or an authorized dealer of a distributor who owns and operates or leases and operates a bulk storage plant with stationary tankage. A Bid from an authorized dealer of a distributor should include a letter, agreement or certification executed by the distributor, stating that the Bidder is an authorized dealer of the distributor. The Bidder must also be registered as a distributor with the New York State Department of Taxation and Finance and/or be a licensed importer, transporter or terminal operator, if applicable.

AND ALL OF THE FOLLOWING:

2. The Bidder's or distributor's bulk storage plant(s) must have sufficient capacity and/or other facilities which, in the opinion of the Commissioner of General Services, shall protect the interests of the State. Such facilities are subject to inspection prior to award, and if found not to be compliant with these requirements, the Bid may be rejected.

"Sufficient" capacity refers to the ability to fulfill the obligations of any resultant contract with New York State. This cannot be quantified in gallons because sufficient capacity for a given Contractor may vary based on volume to be awarded to that Contractor.

3. The bulk storage plant must be located within a reasonable distance from the place or point to which deliveries are to be made by transport, within the guaranteed delivery period as identified by the bidder.

A "reasonable distance" is the distance which allows a Bidder to be able to deliver fuel and provide service to an Authorized User within the required delivery and emergency delivery timeframes. This cannot be quantified in miles as some Bidders may have greater capabilities than others.

4. The Bidder's source of supply is with a reputable oil refiner either directly or through the refiner's authorized distributor. Bidder should supply a letter, agreement or certification executed by the refiner or distributor that shows that the Bidder has an agreement with the refiner or distributor and will be supplied with sufficient quantities of the fuel type(s) referenced in this Solicitation to satisfy the Bidder's obligations for any resultant contract with the State. New York State reserves the right to request updated supplier certification at any time during the contract.
5. The Bidder's delivery trucks for ULS diesel fuel grades 1D, 2D, and Biodiesel, except motor transports, are equipped with meters to accurately measure the quantity of fuel. Tank Wagons used for the delivery of ULS diesel fuel grades 1D, 2D, and Biodiesel must have a meter with ticket printer, which will provide a printed receipt giving an accurate accounting of the amount of fuel delivered. Delivery ticket shall be locked in the printer from the start of delivery until the delivery is completed and recorded.
6. Vendors furnishing ULS diesel and biodiesel fuel to New York State must be registered in accordance with applicable provisions of the New York State Tax Law amendments effective September 1, 1998 or as may be amended. Also, if vendors intend to supply clear fuel, they must possess a valid IRS Form 637UV.
7. Bidder must maintain service facilities and have trained personnel qualified to service the product furnished at the using agency within 48 hours.
8. A Bidder must certify its commitment to obtain all necessary proof of insurance with its bid via Attachment 5 – *Bidder Information Questionnaire*. See Attachment 4 – *Insurance Requirements* for detailed insurance requirements.

Additional information that may be requested from the Bidder includes, but is not limited to, the following:

- Satisfactory evidence that a Bidder has maintained an organization capable of performing the work specified herein, if requested, through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence.
- Evidence of business establishment with adequate inventories of the product(s) offered, and capacity to process and ship large orders to the awarded Region(s). The Commissioner may require a certificate from the Bidder showing the number of years the Bidder has been active in supplying the product(s) offered and the size and location of the inventories regularly maintained.

- References that demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the applicable Lot/County.
- Documentation to demonstrate a Bidder's ability to service the county(ies) on which they bid in order to meet the delivery requirements set forth in Section 6.12, Product Delivery.

Note: Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part may result in a rejection of that Bidder's bid. **For this solicitation, a complete Intent to Bid submitted on or before the date and time indicated in the Key Events/Dates section is required.** Failure to submit a complete Intent to Bid may preclude a Bidder from participating in Solicitation 23216. Please refer to *Section 1.5, Intent to Bid*.

3. SPECIFICATIONS

3.1 Product Requirement

By submitting a bid, the Bidder guarantees that the product(s) supplied will meet or exceed the minimum specifications listed in *Fuel Specifications*. All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975-20, Table 1, or latest version thereof, except as listed differently herein, and ASTM D7467-20, or latest version thereof, for Biodiesel Blends (B6 to B20).

3.2 Guaranteed Analysis

A Bidder must furnish with its Bid one (1) copy of the Guaranteed Analysis of ULS Diesel and/or Biodiesel fuel offered per Attachment 9 – *Guaranteed Analysis*. If the guaranteed analysis exceeds specifications, it will become the Contract standard in the event of Contract award.

3.3 Fuel Specifications

3.3.1 Fill and Vent Requirements

Agencies must ensure that fill and vent equipment adequately meet NYS Standards. Contractors have the responsibility of reporting faulty equipment to the end users and the appropriate NYS regulatory agencies.

Agencies should also refer to [CL-804, dated July 7, 2014](#), as they are responsible for the implementation of monitoring programs to ensure compliance by supplier with these specification requirements.

NOTE: Bidder's delivery trucks MUST BE EQUIPPED WITH METERS, with the exception of motor transports, to accurately measure quantities delivered. Metered deliveries must be accompanied by a delivery ticket showing brand or grade and number of gallons delivered.

3.3.2 Topping Off Tanks

Agency requests to top-off tanks for testing purposes must be honored as described elsewhere herein. The requesting agency may be required to sign a waiver of liability and responsibility on behalf of the Contractor.

Bidder must maintain service facilities and have trained personnel qualified to service the product furnished at the using agency within 48 hours.

3.3.3 Trade Names

For the convenience of ordering, delivering and servicing ULS diesel and biodiesel fuel under the contract, Bidder shall state the trade name for the diesel and biodiesel fuel offered under each type within Attachment 5, Bidder Information Questionnaire, Product Questions tab. Such trade name, however, shall not in any way set aside the requirement of compliance with specifications.

3.3.4 Grade – Temperature Schedule

The Contractor will be responsible for delivery of straight 1D, straight 2D or straight Biodiesel, or any blend of 1D and 2D or Biodiesel as listed in the Solicitation specifications. **Agencies and Authorized Users desiring a mix other than normally required under these specifications must notify the Office of General Services and the Contractor in writing of the specific mix desired, and Contractor shall reply in writing regarding its agreement to provide the mix requested.** Also, unless the agency specified otherwise when ordering, the Contractor will adhere to the following schedule:

Grade/Mix	Temperatures	Costing Formula
#2D/Biodiesel	Spring/Summer/Early Fall* (above 20°F ambient). *Early Fall - used up to October	Current Contract Price
#1D	Winter (coldest areas) (subzero ambient to -40°F)	Current Contract Price
#2D/Biodiesel/1D	Winter Mix: See Low Temperature Operability/Performance Characteristics under Detailed Specifications section	Current Contract Price for respective gallon-age of each grade supplied

3.3.5 Sampling of Diesel Fuel Oil

Diesel fuel oil delivered shall be subject to sampling and testing at the discretion of the purchasing Agency and/or OGS Procurement Services. Normally, all samples collected for testing should be taken from delivery truck at the time of delivery.

The samples shall be collected in accordance with ASTM D4057-19 (IP #MPMS], or latest revision thereof. The usual method of sampling is a three-way bottle/container sampling taken at an upper, middle, and a lower sample point from the delivery vehicle. The sample container is a normally closed stopper type and operator opens it at each point to obtain a proportional amount of the sample.

Product samples taken at the Agency’s dispensing pump shall be considered representative of a disputed diesel fuel oil delivery, when the Contractor has delivered one or more consecutive loads of fuel oil to the tank’s content which is in dispute.

Additionally, when the purchasing Agency’s documentation indicates that previously delivered diesel fuel oil is less than five percent of the tank’s diesel fuel oil volume following any disputed delivery, and the previously delivered diesel fuel oil performed and/or tested satisfactorily, then a sample taken from the pump shall be considered representative of the diesel fuel oil delivered.

3.3.6 Non-Complying Product – Delivery

Deliveries of diesel fuel oil may be sampled at the Contractor’s loading point or at the point of delivery by a representative of the Office of General Services, Procurement Services and/or the purchasing Agency’s personnel. The methods of sampling and testing will be as listed elsewhere herein.

When it is found that diesel fuel oil delivered does not comply with the specification requirements, the Contractor, at its own cost and expense, may be required to remove all such sub-standard diesel fuel oil from the purchaser’s tank(s) and replace it with diesel fuel oil meeting the specifications, if such removal is so instructed by the Office of General Services, Procurement Services, within a maximum time period of twenty-four (24) hours.

When an inspection of the tank(s) after the removal of the sub-standard product indicates that the delivered product has rendered the tank(s) unsuitable for use, then the Contractor may be responsible for cleaning of the tank(s) so affected, if such cleaning is so instructed by the Office of General Services, Procurement Services.

The State may cancel the contract and may purchase the balance of the contract quantities in the open market at the Contractor's expense, if, in the opinion of the Commissioner of General Services, the fuel delivered fails to meet the specific requirements; or, if the fuel is found to contain objectionable dirt, water or excess sediment; and/or an excessively high cold filter plugging point.

3.3.7 Non-Complying Product – Delivery – Operability/Price Deduction

Deductions shown hereafter will be made from the invoice price, or subsequent agency invoices, for delivering diesel fuel oil that does not comply with the detailed specifications, whether or not the diesel fuel oil in question has been consumed by the purchasing Agency. These deductions shall be a flat rate per fill incident, adjusted for the number of non-complying delivery incidents at an individual tank.

Equipment shall be operable (regardless of weather conditions) when fueled from a delivery made within the last (preceding) thirty days. A deduction shall be assessed for each tank fill incident which causes inoperability of equipment using that delivered fuel. This inoperability deduction shall be in addition to the "Price Deduction" assessed for not complying to one (or more) of the Non-Complying Product characteristics stated hereinafter.

3.3.8 Non-Complying Product – Flash Point – Price Deduction

When the delivered diesel fuel oil's flash point is found to be greater than four (4°F) degrees Fahrenheit lower than the specified requirement, a deduction from the contracted invoice price shall be taken as stated in the "Price Deduction Table" found elsewhere within this solicitation's documents.

3.3.9 Non-Complying Product – Water & Sediment Content – Price Deduction

When the delivered diesel fuel oil's water and sediment content is found to be greater than five hundredths (0.05%) of a percent above the specified requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this solicitation's documents.

3.3.10 Non-Complying Product – Viscosity – Price Deduction

When the delivered diesel fuel oil's viscosity is found to be greater than two (2) seconds above the specified maximum requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this solicitation's documents.

3.3.11 Non-Complying Product – Sulfur Content – Price Deduction

When the delivered diesel fuel oil's sulfur content is found to be greater than 0.0018%, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this solicitation's documents.

If any delivered product is found to contain incorrect dye, then all diesel fuel in the tank shall be removed and replaced with an equal quantity of (as applicable, clear or red dyed, tax exempt) complying product.

The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed.

3.3.12 Non-Complying Product – Cetane Index – Price Deduction

When the delivered diesel fuel oil's Cetane Index is found to be greater than two (2) cetane below the specified minimum requirement/s (i.e., 40 and/or 43.5), a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found elsewhere within this solicitation's documents.

The deduction shall be applied to Calculated Cetane Index deficiencies and/or Engine Cetane Index deficiencies. The State may consider waiving these deductions (or adjusting them) if certified documentation of

fuel quality is provided for fuel containing adequate additives. Certified documentation for fuel quality would be satisfied when the additive is certified in accordance with the regulations at 40 CFR 79 and is registered with the United States Environmental Protection Agency. The State reserves the right to require engine Cetane testing at the Contractor’s expense when calculated Cetane is lower than the specified Cetane Index.

3.3.13 Non-Complying Product – Ash Content – Price Deduction

When the delivered diesel fuel oil’s ash content is greater than fifteen thousandths of a percent (0.015%), a deduction from the contracted invoiced price shall be taken as stated in the “PRICE DEDUCTION TABLE” found elsewhere within this solicitations document.

3.3.14 Non-Complying Product – Cold Filter Plugging Point (CFPP) Temperature – Price Deduction

When the delivered diesel fuel oil’s Cold Filter Plugging Point (CFPP) temperature is found to be greater than one (1°C) degree Centigrade above the specified maximum requirement for the respective delivery area and delivery period, a deduction from the contracted invoiced price shall be taken as stated in the “PRICE DEDUCTION TABLE” found elsewhere within this solicitation's documents.

The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed and regardless of equipment operability. If equipment is not operable because of failure of the supplier/Contractor to adjust fuel and additive mix to ensure proper operation in a respective temperature period/zone, then a deduction shall be charged in addition to the preceding CFPP deduction and/or regardless of whether or not the preceding CFPP deduction is assessed.

3.3.15 Price Deduction Table

(NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS)				
Description of Non-Complying Characteristic	Limiting Value	Respective Amount of Deduction	Equipment Operability	Respective Amount of Deduction
<u>FLASH POINT</u> Type: #1D #2PD/1D&2D/1D #2D & 2PD	LESS THAN 116°F 118°F 121°F	1st incident charged at \$250.00 per tank fill*;	WHENEVER	1st incident charged at \$250.00 per tank fill*;
<u>WATER AND SEDIMENT</u>	greater than 0.07%		USE OF DELIVERED	
<u>VISCOSITY (max)</u> SUS at 100°F: Type : #1D: #2D & 2PD	greater than 35 S 40 S	2nd incident charged at \$500.00 per tank fill*;	DIESEL	2nd incident charged at \$500.00 per tank fill*;
<u>SULFUR CONTENT</u> (.0018%, Max)	greater than 0.0018%		FUEL CAUSES	
<u>CETANE INDEX NO.</u> Calculated: Engine:	less than 40 CCI 43.5 CI	Three or more incidences, charged at \$750.00 per	EQUIPMENT	Three or more incidences, charged at \$750.00 per
<u>ASH, % mass</u> 0.01% (max):	greater than 0.015%		ENGINE(S)	
<u>COLD FILTER PLUGGING POINT</u> For OCTOBER Use For NOVEMBER Use	greater than **North/South -12°C/-10°C -17°C/-14°C		TO NOT OPERATE (SHUTDOWN),	

For DECEMBER Use	-30°C/-23°C	tank fill*.	DEDUCT THE FOLLOWING:	tank fill*.
For JANUARY Use	-33°C/-25°C			
For FEBRUARY Use	-33°C/-24°C			
For MARCH Use	-25°C/-18°C			

* “Tank fill”, as used in this Table, shall be an individual (drop) fuel delivery into a purchasing facility’s fuel storage tank by the Contractor’s authorized delivery vehicle.

***“North/South”, as used in this Table, shall respectively designate the temperature limits for facilities which are located north of 42° latitude and others which are located south of 42° latitude.

3.3.16 Dye Marker Content

All product provided shall be free of visible evidence of the blue dye 1.4-diakylamino-anthraquinone. This requirement shall be in full compliance with Federal Clean Air Act, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof.

EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164. **RED-DYED FUEL MUST BE PROVIDED FOR CUSTOMERS REQUESTING IT, AT CONTRACT PRICE!**

3.3.17 Flash Point

The specified minimum Flash Point for Fuel Oils provided under this contract shall be: 120°F for 1D; 122°F for 2PD/1D and 2D/1D (50/50 blend); and 125°F for 2D and 2PD. Delivered product having a flash point below the respective requirement given above, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications. The Flash Point shall be determined using ASTM Test Method D93-19 (IP #34/85), or latest revision thereof, Flash Point by Pensky-Martens Closed Tester.

3.3.18 Water and Sediment

The intended Water & Sediment (W & S) content for Fuel Oils provided under this contract shall be two hundredths (0.02% V/V) of a percent.

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a water & sediment greater than five hundredths (0.05% V/V) of a percent shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications, at purchasing agency’s discretion based on excessive filter maintenance and/or poor vehicle performance. The Water & Sediment content shall be determined using - ASTM Test Method D1796-11 (2016) (IP #75/82), or latest revision thereof. Product with W & S over 0.02% V/V but not over 0.05% V/V shall have additives ensuring smooth engine combustion and may be considered for this solicitation. A haze rating @ 25°C (77F) shall be a maximum of 2 using ASTM Method D4176-04 (2019) or latest revision thereof.

3.3.19 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this contract shall be: thirty-three (33 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 1-D fuel oil; and thirty eight (38 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 2-D and 2-PD fuel oils. Delivered product having a viscosity greater than 33 SUS @ 100°F or 38 SUS @ 100°F, respectively, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a viscosity greater than 35 SUS @ 100°F for 1-D; or 40 SUS @ 100°F for 2-D or 2-PD shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications, at purchasing agency’s discretion based on excessive filter maintenance and/or poor vehicle performance. The viscosity shall be determined using ASTM Test Method D445-19a (IP #71/84), or latest revision thereof; and ASTM D2161-19, 1999e2, Conversion of Kinematic Viscosity to Saybolt Universal Seconds (Table 1), or latest revision thereof relative to the individual characteristics of the product being tested.

3.3.20 Cloud Point

The maximum cloud point temperature shall be equal to the tenth percentile minimum ambient temperature listed elsewhere herein under the heading LOW TEMPERATURE OPERABILITY PERFORMANCE. The maximum cloud point temperature for product, delivered from APRIL through the Summer use period, shall be thirty-one (31°F) degrees Fahrenheit [minus five tenths (-0.5°C) of a degree Centigrade]. The Cloud Point shall be determined using ASTM Test Method D2500-17a (IP #219/82), or latest revision thereof, in accordance with ASTM D975-20 procedures, or latest revision thereof

3.3.21 Cold Filter Plugging Point (CFPP)

The specified maximum CFPP for low temperature operability/performance of fuel oils provided under this contract shall be twenty-seven (27°F) degrees Fahrenheit [fifteen (15°C) degrees Centigrade] below the specified cloud point. The CFPP shall be determined using Institute of Petroleum Test Method IP #309/83, or latest revision thereof relative to the individual characteristics of the product being tested. This method is technically equivalent to the British Standard BS6188 and European Standard EN116.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon the State’s request and the Contractor shall pay a price penalty as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

3.3.22 Sulfur

The specified maximum Sulfur content for Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent, per table which follows. Delivered product having sulfur content greater than fifteen ten thousandths of a percent (.0015%) shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications. The Sulfur content shall be determined using ASTM D2622-16, or ASTM D4294-16e1; or latest revisions thereof relative to the individual characteristics of the product being tested.

SUMMARY OF SULFUR CONTENT (REQUIREMENTS):

Geographical Area of the State	Percent of Sulfur by Weight (Maximum)
Statewide Highway Vehicles:	0.0015% (fifteen ten thousandths of a percent).

3.3.23 Type of Use Requirements

Effective October 15, 2006, the maximum sulfur content shall be .0015% (fifteen ten thousandths of a percent) for all diesel fuel used in highway vehicle motors. This shall apply to all highway vehicles (diesel engine) Statewide. All off-highway equipment motors shall comply with the prior geographical area requirements for sulfur content, or engine manufacturer’s recommendation whichever is stricter.

3.3.24 Cetane Rating

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty-two (42.0) CCI shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency's tank and replaced with product conforming to specifications. The Calculated Cetane Index value shall be determined using ASTM Test Method D976-06-2016 (IP #364/84), or latest revision thereof; or ASTM D4737-10 (2016), or latest revision thereof; relative to the individual characteristics of the product being tested.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Non-Complying Product - Cetane Content/Price Deduction" shall be waived.

3.3.25 Ash

The specified maximum ASH content for Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Additionally, a product having excessive ash content shall be removed and/or adjusted in price as specified elsewhere herein. The Ash content shall be determined using ASTM Test Method D482-19 (IP #4/81), or latest revisions thereof - relative to the individual characteristics of the product being tested.

Delivered product having an ash content above the maximum by greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.10%) of a percent above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having an ash content of one tenth (0.10%) of a percent by weight, or greater, above the maximum specified shall be removed from the site upon the State's request and the Contractor shall pay a price penalty as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective ash contents shall be listed elsewhere herein.

3.3.26 Diesel Fuel Oil Requirements

The diesel fuel oil supplied under this contract shall meet the universal details listed previously, the seasonal and other listed requirements which follow:

The diesel fuel oil supplied shall be visually free of undissolved water, sediment, suspended matter, and shall be clear & bright at the ambient temperature, or seventy (70°F) degrees Fahrenheit, whichever is higher. Diesel Fuel oil supplied shall NOT contain any alcohol.

The winter mix diesel fuel oil, regular, premium, and Biodiesel supplied shall meet their respective requirements as listed elsewhere herein. In addition, these grades of fuel oil shall conform to the "LOW TEMPERATURE OPERABILITY PERFORMANCE" requirements listed later herein.

3.3.27 Grade 2D (2-D) Diesel (Regular) Fuel Oil

Grade 2D fuel oil shall meet specifications listed previously herein & it shall be suitable for use in spring/summer/fall climate conditions.

3.3.28 Grade 1D (1-D) Diesel Fuel Oil

The Grade 1D fuel oil shall meet the specifications listed previously herein and it shall be suitable for use during winter (sub-zero) climate conditions. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/solicitation.

3.3.29 Grade 2D/1D Winter Mix (Regular Diesel/Kerosene) Diesel Fuel Oil

The Grade 2D/1D Winter Mix Diesel Fuel Oil shall meet the specifications listed in section 3.3, *Fuel Specifications*, and it shall be suitable for use during winter (purchasing Agency's local ambient temperature) climate conditions.

It shall be proportioned to provide a cloud point equal to the tenth (10th) percentile minimum ambient temperature expected for the region and period of use.

3.3.30 Grade 2PD/1D Winter Mix (Premium Diesel/Kerosene) Diesel Fuel Oil

The Winter Mix Premium Grade Diesel Fuel Oil shall be a homogenous mixture of the base diesel fuel oils (1D & 2PD) and specific purpose additives formulated to improve overall product performance. The additives shall be comparable to those stated for 2PD in section 3.3.31 of this Solicitation.

3.3.31 Grade 2PD (Premium) Diesel Fuel Oil

The Premium Grade Diesel Fuel Oil shall be a homogenous mixture of 2D base diesel fuel oil and specific purpose additives formulated to improve overall product performance. The additives are as follows:

Detergents - shall be included to remove gum and/or varnish build-up on fuel system components. They shall carry removed substances to the fuel filter where the substances are separated from the product. At the injectors they shall dissolve and remove combustion deposits from the orifice tip, maintaining required spray patterns for proper combustion. Detergents shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.)

Corrosion/Rust Inhibitors - shall be included to prevent the rusting and/or corroding of the cleansed surfaces in the fuel system. The presence of the required corrosion inhibitors in the fuel oil shall be determined using NACE (National Association of Corrosion Engineers) standard test method number TM0172-01. This method is an "A" - spindle test having a grading range from "A" through "E"; "A" indicating no corrosion and "E" indicating extreme corrosion. The Premium Diesel Fuel Oil supplied shall have a rating of B5++0, or better, when tested by this method.

Stabilizer - shall inhibit oxidation of the fuel oil, reducing darkening & sludge formation in the fuel oil as it ages (during prolonged storage periods). The presence of the required stabilizer (degradation inhibitors) in the fuel oil shall be determined using Dupont's standard test method number F21-61. This method is a thermally accelerated degradation process which measures stability based on substance accumulation on a ten micron filter which is compared to a standardized chart. The Premium Diesel Fuel Oil supplied shall have a rating of seven (7), or lower, when tested by this method.

De-hazer - shall remove any traces of moisture that might be suspended in the fuel oil mixture and/or any ambient moisture which might condense in the product. It shall disperse/separate such moisture (water) from the fuel and result in fuel oil clarity.

Visual Indicator - should be included in all premium diesel fuel oil. The indicator shall be a fluorescent dye which is clearly distinguishable from the standard base fuel oil's color with the use of a black light, etc. Red dye - visible (daylight) to the naked eye indicates Federal Tax Exempt.

Premium grade diesel fuel oil which does not conform to the stabilizer, corrosion ratings specified herein shall be removed or an adequate additive shall be provided. The NYS Chief Procurement Officer's decision to remove or accept corrective additive amounts (provided & intermixed at the Contractor's cost & expense) to the fuel oils in question shall be final.

3.3.32 Premium Cetane Rating

The premium diesel (Grade 2PD & 2PD/1D [Winter Mix]) fuel oil shall contain the respective (specified) combination of the base fuel oil(s) (1D & 2D) and it shall meet all the specifications listed elsewhere herein for those base fuel oils.

In addition to its base fuel oil meeting the Calculated Cetane Index value specified previously herein for all the fuel oils. The premium fuel oil shall have a total (calculated plus cetane improvers) Cetane Index value of forty-five and one-half (45.5) Cetane. ASTM Test Method D976-06-2016 (IP #364/84), or latest revision thereof; or ASTM D4737-10 (2016), or latest revision thereof, shall be used for calculating whether the Cetane number is 45.5. However, the premium grade diesel fuel oil's Cetane Index value shall be determined using (the engine ignition method) ASTM Test Method D613-18a (IP #41/81), or latest revision thereof, when the previously specified calculated method for cetane of the base fuel oil is less than a 45.5 cetane value.

The premium fuel oil shall conform to the specified Cetane Index listed herein, both Calculated Cetane Index and Engine Cetane Index (D613-18a). When a given sample is determined to be in non-compliance of either or both Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Inferior Cetane Content/Price Deduction" shall be waived.

3.3.33 Cetane Improver

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a 2-ethyl-hexyl-nitrate cetane improver which shall increase the cetane value of the fuel by a minimum of four (4) numbers (i.e., a 42.0 cetane fuel shall raise to a cetane of 46.0, or better). A minimum of thirty (30%) percent of the additive package shall be cetane improver.

3.3.34 Cold Filter Flow Improver

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a cold filter flow improver which shall provide a maximum fuel oil CFPP temperature which is eighteen (18°F) degrees Fahrenheit [ten (10°C) degrees Centigrade] below the respective Cloud Point temperatures listed elsewhere herein under the heading "LOW TEMPERATURE OPERABILITY/PERFORMANCE CHARACTERISTICS."

Winter Mix delivered for use during the months of November through March shall have a cold filter flow improver as specified herein.

3.3.35 Detergent

This additive shall possess detergent characteristics. It shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.) and it shall pass a verifiable, objective dynamometer test which proves keep-clean or clean-up ability relative to untreated fuel oil. The Mercedes Benz OM-616 Coker Test, or comparable test, shall be acceptable for proof of performance.

3.3.36 Corrosion Inhibitors

At the manufacturer's recommended full-strength dosage ratio, this additive shall possess corrosion inhibitors which shall ensure a B⁺⁺, or better, NACE rating (steel spindle test).

3.3.37 Water Dispersal

This additive shall provide water dispersant characteristics which neither: completely shed water, nor completely emulsify the water. It shall emulsify water in the fuel oil being treated at a controlled rate of one hundred (100 gal) gallons, maximum, per million gallons of fuel being treated.

3.3.38 Deicing Capability

At the manufacturer’s recommended full-strength dosage ratio, this additive shall provide adequate deicing capability.

3.3.39 Additive Reference (Winter Mix, CFPP Improver)

Any additive supplied under this contract shall be: AGA/Truck-Pro (Carter Chem.) product named “Artic Arnol”, or NALCO Chemical Co. product code number “88BK108 Liquid”, or comparable product; meeting the minimum requirements of this specification.

3.3.40 Requirements Summary

PARAMETER	TEST METHOD	1D FUEL OIL	2D FUEL OIL	2PD FUEL OIL
Flash Point, min.	D93-16a	120 °F	125 °F	125 °F
Water & Sed., max.	D1796-11(2016)	0.02% V/V	0.02% V/V	0.02% V/V
Water & Sed., Haze Rating, max.	D4176-04(2014)	2.0	2.0	2.0
Viscosity, max.	D445-17a/D2161-17	33SUS@100 °F	38SUS@100 °F	38SUS@100 °F
Ash, % mass, max.	D482-13	0.01	0.01	0.01
Sulfur, % mass, max.	D2622-16 or D4294-16e1	0.0015%	0.0015%	0.0015%
Cetane Index (calculated)	D976-06-2016 (IP 364/84)	42.0 (min.)	42.0 (min.)	42.0 (min.)
Cetane Number (engine)	D4737-10(2016) D613-17ce1	42.0 (min.)	42.0 (min.)	45.5 (min.)
Aromaticity, % vol., possible min.	D1319-15	-----	27.0	27.0
Aromaticity, % vol., possible max.		35.0	35.0	35.0
Cloud Point, °C, max.	D3117-03 D2500-17a	Same as Ambient Temp, October through March		
Cloud Point, °C, min.	IP309/83	See Low Temperature Operability Table		
Carbon Residue (mass %), max., on 10% Ramsbottom	D524-15	0.15	0.35	0.35
Corrosion Inhibitors	TM0172, NACE	Mfr’s std.	Mfr’s std.	B5++0 or better
Stabilizer	F21-61, Dupont	Mfr’s std.	Mfr’s std.	“7” or less

3.3.41 Blending/Delivery Requirements

All fuel oil delivered which contains combinations of 1D, 2D, or winterizing additives shall be blended at the bulk plant, or via a dual/multiple manifold on the truck which mixes them for a simultaneous delivery. Delivery/ies via a non-manifold type truck (i.e., product which is not premixed) should not be accepted.

Cetane and cold filter plugging point (CFPP) parameters shall be met regardless of product mix.

3.3.42 Low Temperature Operability/Performance Characteristics

The WINTER MIX (2D/1D) and premium diesel, 2PD/1D (WINTER MIX), fuel oil deliveries shall conform to the cloud point and cold filter plugging point temperatures within this section and shall ensure that the maximum percentage of 2D fuel is included in the mix relative to those maximum temperature points. The percentage of 1-D fuel oil used to ensure the proper CFPP temperature shall not exceed fifty (50%) percent of the base oils mix ratio. When necessary to ensure compliance with low temperature characteristics, the use of winterizing additives which meet the conditions stated elsewhere herein shall be required. Cummins states that their engines need a fuel with 60% (minimum) #2 diesel content for Winter Mix.

The fuel oils shall meet the following respective low temperature operability/performance characteristics when tested in accordance with ASTM D975-20, or latest version thereof, and the test methods listed herein under the heading “UNIVERSAL DETAILS”.

WINTER MIX PERFORMANCE PERIODS	AMBIENT TEMPERATURE and CLOUD POINT (maximum)		CFPP TEMPERATURE (maximum)		
	42°LAT/North - South 42°LAT		42°LAT/North - South 42°LAT		
Deliveries	OCTOBER	+26°F(- 3°C)	+31°F(-0.6°C)	+ 8°F(-13°C)	+13°F(-11°C)
with Next	NOVEMBER	+17°F(- 8°C)	+23°F(- 5°C)	- 1°F(-18°C)	+ 5°F(-15°C)
Scheduled	DECEMBER	- 2°F(-19°C)	+ 7°F(-14°C)	-24°F(-31°C)	-11°F(-24°C)
Replenish-	JANUARY	-2°F(-19°C)	+ 3°F(-16°C)	-29°F(-34°C)	-15°F(-26°C)
ment	FEBRUARY	-2°F(-19°C)	+ 5°F(-15°C)	-29°F(-34°C)	-13°F(-25°C)
In	MARCH	+ 3°F(-16°C)	+16°F(- 9°C)	-15°F(-26°C)	- 2°F(-19°C)
Delivery In All Other Periods		-		+ 13°F(-11°C) +13°F(-11°C)	

WINTER MIXES: In regard to NYS DOT sites, the regional equipment manager (transportation motor equipment manager) has the discretion to mandate the winter mixes that will exceed the chart above for cloud point at individual sites.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed above or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud & cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

3.4 Biodiesel Fuel Specifications

3.4.1 Biodiesel Usage Considerations

There are many positive benefits attributed to the use of B5, B10 and B20 Biodiesel fuel as compared to normal "petro diesel" fuel. The most mentioned are decreased emissions of various pollutants, increased engine life, reduced reliance on uncertain petro fuel sources, renewable fuel source and safety in handling. However, there are also a number of properties of Biodiesel fuel that potentially impact on equipment, storage and OEM warranty coverage. These considerations are detailed below.

Fuel Filters: Fuel filters on the vehicles and in the delivery system should be checked frequently upon initial Biodiesel use and changed as necessary. Biodiesel and Biodiesel blends have excellent solvent properties and may affect cellulosic filters due to solubility of resin and binders used in those filters. Glass fiber-based filters manufactured without the use of binders are probably not affected.

Sediment: Use of 2D Diesel fuel can leave a deposit in the bottom of fueling lines, tanks, and delivery systems over time. The use of Biodiesel can dissolve this sediment and result in the need to change filters more frequently when first using Biodiesel until the whole system has been cleaned of the deposits left by the petro diesel.

Solvent Properties: Biodiesel is an excellent solvent. Biodiesel can, if left on a painted surface long enough, dissolve certain types of paints. Therefore, it is recommended to wipe any Biodiesel or Biodiesel blend spills from painted surfaces immediately. In addition, Biodiesel blends can soften and degrade certain types of elastomers and natural rubbers over time. These materials may be used in fuel systems. OEM's of vehicles/engines should be contacted for specific information and concerns in this area.

Spontaneous Combustion: Biodiesel is made from vegetable oils and/or animal fats which can oxidize and degrade over time. The oxidizing process can produce heat. In certain environments a pile of oil-soaked rags can become hot enough to result in a spontaneous fire. Biodiesel soaked rags should be stored in a safety can or dried individually to avoid the potential for spontaneous combustion.

Storage: All fuels have a shelf life. This is also true with Biodiesel and Biodiesel blends. Available data indicates that B5, B10 and B20 Biodiesel fuel should be used within six months of manufacture. Fuels determined to have a Total Acid Number (by ASTM D664-18e2 or latest version thereof) of greater than 0.25KOH/g are not recommended for use.

OEM Considerations: The impact of Biodiesel use on warranty coverage varies by vehicle/engine manufacturer. Major engine manufacturers have all issued statements regarding the use of Biodiesel fuel as it pertains to their warranty coverage. BEFORE deciding to use B5, B10 and B20 fuel, prospective users should make sure they have checked with the manufacturers of their diesel equipment for considerations and concerns related to that usage. Copies of the major manufacturers' statements regarding warranty impact of using Biodiesel may be obtained from the National Biodiesel Board at (800) 841-5849.

3.4.2 Dye Marker Content

All products provided shall be free of visible evidence of the blue dye 1,4-diaxylamino-anthraquinone. This requirement shall be in full compliance with Federal CCA*, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof. EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164. RED-DYED FUEL MUST BE PROVIDED FOR CUSTOMERS REQUESTING IT, AT CONTRACT PRICE.

3.4.3 Finished Fuel Requirements

MATERIAL: The finished B5, B10 and B20 Biodiesel fuel blends shall be prepared using the following feedstocks:

1D Light Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

2D Middle Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

Biodiesel (B100) Fuel: Biodiesel fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and meeting the requirements of ASTM D6751-15ce1, or latest version thereof, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels".

3.4.4 Workmanship

The finished B5, B10 or B20 Biodiesel fuel blend shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D 4176-04(2019), or latest version thereof, procedure 1 or 2.

3.4.5 Physical and Chemical Requirements (Table)

The Biodiesel portion of the finished B5, B10 or B20 Biodiesel fuel blends shall be 5%, 10% and 20% respectively by volume of B100 Biodiesel fuel with a tolerance of +/-1%. Remaining 95%, 90% or 80% of the final blend shall be composed of 1D and 2D Diesel fuel in proportions as necessary to produce an end product meeting the requirements listed in the Physical and Chemical Requirements Table below

PARAMETER	TEST METHOD	B5/B10/B20 BIODIESEL FUEL
Flash Point, min.:	D93-20	125°F
Water & Sed., max.:	D2709-16	0.05% V/V
Water & Sed., Haze Rating, max.:	D4176-04 (2019)	2.0
Viscosity, max.:	D445-19/D2161-17	38SUS@100°F
Ash, %mass, Max.	D482-19	0.01
Sulfur, % mass, max.:	D2622-16 or D4294-16e1	0.0015%
Cetane Index (Calculated)	D4737-10(2016)a	42.0 (min.)
Cetane Number (Engine)	D613-18a	42.0 (min.)
Aromaticity, % vol., Max.	D1319 – 19	28.0
Cloud Point, °C max.	D2500-17a	As shown in the "Low Temperature Operability" Table
CFPP Point, °C,	IP309	As shown in the "Low Temperature Operability" Table
Carbon Residue (mass %), max, on 10% Ramsbottom:	D524-15 (2019)	0.35
Total Acid Number (TAN), mg KOH/g, maximum	D664-18e2	0.25
Corrosion Inhibitors	TM0172-2001, NACE	Mfr's std.
Stabilizer	F-21, Dupont Thermal Stability	Mfr's std.

3.4.6 Flashpoint

Delivered product having a flash point below the respective requirement given in Physical and Chemical Requirements Table shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

3.4.7 Water and Sediment

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a water & sediment greater than seven hundredths (0.07% V/V) of a percent shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

3.4.8 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this contract shall be thirty-eight (38 SUS @ 100°F) Saybolt Universal Seconds. Delivered product having a viscosity greater than 38 SUS @ 100°F, respectively, shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a viscosity greater than 40 SUS @ 100°F shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

3.4.9 Cloud Point

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The cloud point temperature of the material supplied for these various delivery periods shall be no greater than the tenth percentile minimum ambient temperature as listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

3.4.10 Cold Filter Plugging Point (CFPP)

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The CFPP of the material supplied for these various delivery periods shall be no greater than the values listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon the State's request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

3.4.11 Sulfur

The specified maximum Sulfur content for Diesel Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent. Delivered product having a sulfur content greater than fifteen ten thousandths of a percent (0.0015%) shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

3.4.12 Cetane Rating

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty two (42.0) CCI shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Non-Complying Product - Cetane Content/Price Deduction" shall be waived.

3.4.13 Ash

The specified maximum ASH content for Diesel Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Delivered product having an ash content greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.010%) of a percent above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having an ash content of one tenth (0.010%) of a percent or greater above the maximum specified shall be removed from the site upon the State's request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

3.4.14 Low Temperature Operability Table

Shall be the same as listed elsewhere herein for Standard Petroleum Diesel Fuel.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed in the "Low Temperature Operability Table" or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud and cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

3.4.15 Non-Complying Product & Operability Table For Price Deductions

Shall be the same as indicated under "General Information" herein.

3.4.16 Feedstock Diesel Fuel Oil Requirements

The Diesel fuels used as feedstocks in the manufacture of B5, B10 or B20 Biodiesel fuel shall meet or exceed the requirements of ASTM D975 -20, or latest version thereof, and the requirements listed below and in the Requirements Summary table below before being blended to produce the B5, B10 or B20 Biodiesel end product.

3.4.17 Workmanship

Fuel shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D 4176-04 (2019), procedure 1 or 2, or latest version thereof. Fuel oil shall NOT contain any alcohol.

3.4.18 2D Diesel (Regular) Fuel Oil

Grade 2D fuel oil shall meet the specifications listed in the Requirements Summary table below.

3.4.19 1D Diesel Fuel Oil

The Grade 1D fuel oil shall meet the specifications listed in the Requirements Summary table below. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/solicitation.

3.4.20 Requirements Summary (Table)

Except for Water & Sed., max., shall be same as listed under "Requirements Summary" elsewhere herein for "Standard Petroleum Diesel Fuel".

PARAMETER	TEST METHOD	1D Diesel Fuel	2D Diesel Fuel
Water & Sed., max.:	D2709-16	0.02% V/V	0.02% V/V

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) 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/vendors/>

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 1 - *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. Two (2) USB flash drives containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 1 – Pricing (must be submitted as an Excel file);
 - c. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
 - d. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
 - e. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
 - f. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - g. Completed Attachment 6 – Bidder Submission Checklist (Excel);
 - h. Completed Attachment 9 – Guaranteed Analysis (PDF);
 - i. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - j. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);
 - k. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - l. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF);
 - m. A Supplier letter or certification from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel to meet contractual volume. (PDF)

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 with original ink signatures;
 - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
 - c. Completed Attachment 3 – Encouraging Use of NYS Businesses;
 - d. Proof of compliance with Attachment 4 – Insurance Requirements;
 - e. Completed Attachment 5 – Bidder Information Questionnaire;
 - f. Completed Attachment 6 – Bidder Submission Checklist;
 - g. Completed Attachment 9 – Guaranteed Analysis;
 - h. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - i. Completed MWBE 100, MWBE Utilization Plan (if applicable);
 - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
 - k. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online;
 - l. A Supplier letter or certification from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel to meet contractual volume.

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 Pricing Page Instructions

Please reference Attachment 1 – *Pricing* for detailed instructions on how to submit pricing.

A Bidder shall submit its proposed pricing by Item contained in Attachment 1 – *Pricing* in the “Bid Price Submittal Sheet” tab. The price per gallon is based on OPIS’s *Oil Price Daily’s* posted prices as of July 30, 2020. Soy pricing is based on the Wall Street Journal’s posted settlement price per pound for crude soybean oil (Central Illinois) as of July 30, 2020.

A Bidder must enter a Price Per Gallon 2D and a Price Per Gallon 1D (Kerosene) for any Items within a county on which it wishes to bid. The Price per Gallon entered should indicate Bidder’s total Price per Gallon, which includes the fuel price and markup for all additional costs; see Section 6.3 Price of this solicitation. **A Bidder is not required to bid on every Lot; A Bidder May bid on as few or as many Lots as desired.** A Bidder may also enter a Volume Discount in Cents Per Gallon (for orders 5,500 gallons and greater). If a Bidder does not specify a Volume Discount, a discount of \$0.0000 will be assumed. Any Volume Discount offered by a Bidder will not factor into the cost evaluation, except in cases of a tie Bid.

The tabs will auto-populate the Combined Bid Price (per gallon) for each Item that is bid. For all items that a Bidder elects to bid, a Bidder must specify the following:

Column Title	Description
Price Per Gallon 2D	Specify the price per gallon for 2D (Required)
Price Per Gallon 1D	Specify the price per gallon for 1D (Required)
Volume Discount (for orders 5,500 gallons or greater)	Specify the cents per gallon discount for orders 5,500 gallons and greater (If this is not specified by a Bidder, this will be calculated as \$0.0000.)

Attachment 1 – Pricing will limit the number of decimal places for a dollar amount that a Bidder enters to four (4) decimal places.

Attachment 1 - Pricing will calculate a Combined Bid Price (per gallon) for each Item bid based on a combination of the Price Per Gallon 2D and the Price Per Gallon 1D. Both the Combined Bid Price and the Total Bid Price are truncated to four (4) decimal places.

4.6 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 #23216)
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.

4.7 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 - *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

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.

4.8 Important Building Access Procedures

Bidders are hereby advised that due to COVID 19, OGS Procurement Services will not be accepting hand-delivered bids (mail services are still allowed to access the building).

4.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – NYS Required Certifications) with its Bid.

4.10 Supplier/Manufacturer's Certificate

Bids will be accepted only from established refiners, distributors or authorized dealers. The Bidder's submission of the Supplier's letter or certification from the refiner or distributor guarantees that the Bidder is an authorized dealer or distributor, and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligation under any resultant Contract with the State.

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

4.11 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, Appendix B (General Specifications) or Appendix C (Federal Emergency Management Agency Terms and Conditions) 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.

4.12 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>.

4.13 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.

4.14 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.

4.15 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.
- X. Conduct pre-award meetings with individual Bidders to determine their capability of meeting any of the requirements of the Solicitation specifications.
- Y. Investigate or make any inquiry into the capacity of any Bidder to properly perform under any resultant Contract Award, and subsequently during the duration of the contract term.

4.16 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

Award shall be made by lowest Total Bid Price by Item to responsive and responsible Bidders.

5.1.1 Evaluation Process

Financial Evaluation

A Bidder's pricing must be presented in Attachment 1 – Pricing, as directed in Section 4.5 – *Pricing Page Instructions*, to enable the evaluation of pricing according to the State's prescribed formula.

Award shall be made by Item to the lowest responsive and responsible Bidder for Diesel Regular, Diesel Premium, and Biodiesel fuels. Total Bid Price will be determined according to the following:

Price will be truncated to four (4) decimal places:

$$\frac{2 \times 2D \text{ Price} + 1D \text{ Price}}{3} = \text{Total Bid Price}$$

EXAMPLE: 2D @ \$1.00 x 2 = \$2.00
1D @ \$1.05 x 1 = \$1.05
Combined Bid Price = \$3.05

$$\$3.05 / 3 = \$1.0166(6)$$

Total Bid Price = \$1.0166

In order to attempt to ensure an adequate supply of oil during the contract period, the State reserves the right, at its sole option and discretion, to limit the number of Items and/or total gallons awarded to any one Bidder on requirements in one county or combination of counties included in the Solicitation.

Administrative Evaluation

After the bid opening and financial evaluation, each bid in line for an award will be screened for completeness and conformance with the stated requirements for Bid submission as set forth in Section 4 of this Solicitation. Any bid not meeting these requirements may be deemed nonresponsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has responded to all questions in Attachment 5 – Bidder Information Questionnaire.

5.2 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.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

Subject to Section 1.14 above, and notwithstanding the provisions of Appendix B, *Contract Creation/Execution*, the Contract will be in effect for a term beginning on November 27, 2020 and ending on August 26, 2021.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date. At the State's option, the Contract may be extended for two (2) additional years, 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, and subject to the approval of OSC. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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 three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

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

Prices quoted shall be billed net per gallon, F.O.B. agency storage tanks. Prices quoted shall include all applicable customs, taxes, including LUST, license and research fees (e.g. NORA), and surcharges. Bid prices must be expressed in U.S. currency and shall be submitted to four (4) decimal places (priced in dollars per gallon).

Pricing for contract purchases shall be based on the pricing in effect at the time the Authorized User places the order (Prompt Will-call). Authorized Users that are on automatic delivery shall be priced on the day of delivery, unless the Authorized User requests a delivery. The price shall then reflect the day of the order.

Pricing shall reflect the day of delivery for orders placed by the Authorized User that go beyond the guaranteed delivery timeframe of 24 (twenty-four) hours. For example, the Authorized User orders 500 gallons of diesel fuel on Wednesday, and requests that the delivery be made on the following Tuesday.

For situations where an Authorized user wants to place an order for an unusually large volume of fuel (e.g., 40,000 gallons or more than a truck load, or delivering over a period of time), the Contractor and Authorized User should contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

Truck delivery ticket volumes and Contract User's gauged volumes must agree within a tolerance of 0.5% of the total delivered volume for delivery volumes greater than 500 gallons and up to 1% for delivery volumes less than or equal to 500 gallons. If the volume difference exceeds the tolerance level, the Contract User's measured volume, if available, will be used for invoice payment. Contract Users reserve the right to reject "rogue" trucks which have been identified as having repeated meter inaccuracies. Trucks without sealed and calibrated meters will not be permissible for deliveries.

It shall be the Contractor's responsibility to satisfy Authorized User requirements by furnishing blended product when called for during the time period indicated in the Solicitation. Any special allowances should not be included in the bid price as they cannot be considered in evaluating bids. However, if the Bidder extends such allowances during the term of the contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase fuel oil under similar contractual terms and conditions.

Bid prices shall be firm except that price revisions will be permitted in accordance with the *Price Adjustments/Revisions* clause set forth in this Solicitation and with respect to certain taxes and duties as follows:

“After-imposed tax” means any new or increased Federal, State and local excise tax or duty, except social security or other employment taxes, on diesel fuel purchased under any contract to be awarded hereunder which the contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the date of contract award.

“After-relieved tax” means any amount of Federal, State and local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on diesel fuel purchased under any contract to be awarded hereunder which the contractor is not required to pay or bear the burden of, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the date of contract award.

The bid price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B, clause 8, *Taxes*, included with this Solicitation.

NOTE: The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.

The price for diesel fuel under any contract to be awarded hereunder shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says otherwise, if the contractor states in writing that such contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next schedule price revision.

The price for diesel fuel under any contract to be awarded hereunder shall be decreased by the amount of any after-relieved tax. Such decrease shall be effective when realized or by no later than the next scheduled price revision.

The contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price for fuel thirty days (30) prior to adding to invoices.

6.4 OPIS Posting Locations

OPIS Posting Locations have been established for all counties for purposes of this Solicitation and resulting contract awards. Upon Contract award, a Contractor’s pricing will be based on the posted price in *Oil Price Daily* for ULS Diesel and Kerosene in the OPIS Posting Locations identified below:

Albany	Buffalo	Long Island*	Newburgh	Syracuse	Utica
Albany	Allegany	Bronx	Columbia	Broome	Chenango
Clinton	Cattaraugus	Kings	Dutchess	Cayuga	Fulton
Delaware	Chautauqua	Nassau	Greene	Chemung	Hamilton
Essex	Erie	New York	Orange	Cortland	Herkimer
Franklin	Genesee	Queens	Putnam	Schuyler	Jefferson
Otsego	Livingston	Richmond	Rockland	Seneca	Lewis
Rensselaer	Monroe	Suffolk	Sullivan	Steuben	Madison
St Lawrence	Niagara	Westchester	Ulster	Tioga	Montgomery

Saratoga	Ontario			Tompkins	Oneida
Schenectady	Orleans			Yates	Onondaga
Schoharie	Wayne				Oswego
Warren	Wyoming				
Washington					

*Newark, NJ posting location is utilized for the Kerosene low price for the Long Island posting location.

6.4.1 Location Change or Substitution

Should the designated posting location become unavailable or differ from the current description and/or format, a posting determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

6.4.2 Calculation Change or Substitution

Should the product revision calculation become unavailable or differ from the current description and/or format, a calculation determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

6.4.3 Product Change or Substitution

Should the product originally awarded become unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause of Appendix B), the new product and price calculation determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

6.5 Price Adjustments/Revisions

Contract prices shall be firm except that price revisions will be permitted in accordance with the following procedure:

Price revisions (increases or decreases) to the original Contract price shall be based on prices in OPIS's *Oil Price Daily* for Kerosene and ULS Diesel, under the heading, "Daily Petroleum Prices", Rack prices only, which are designated for ultra-low sulfur products. 1D and 2D Prices will fluctuate according to the "Ultra Low Sulfur Kerosene" and "Ultra Low Sulfur Diesel" postings selected. The terms "Posting Day" or "Posted Price" as used throughout this Solicitation and any resulting Contract refers to the actual day the prices are posted.

The low price shown in OPIS's *Oil Price Daily* postings will be used to compute price revisions during the Contract period. Procurement Services will compute any price revisions by determining the difference between the Posted Price on July 30, 2020 and the Posted Price on every Thursday during the contract period, beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the Contract start date. The differential between these two (2) prices will be added or subtracted to the bid price per gallon, yielding the new weekly price. If the Contract award is made in a subsequent week after November 26, 2020, then the posted price on the last business day in the preceding week will be used.

The aforementioned mechanism for weekly price revisions would then be applied to the Contract prices throughout the Contract period. Price revisions will be calculated by truncating all figures (priced in dollars per gallon) to four (4) decimal places. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted by OPIS on Thursday, the previous business day on which the specified prices are posted will be utilized. The published prices on July 30, 2020 for 1D (ultra-low sulfur Kerosene) and 2D (ultra-low sulfur Diesel) are shown in the table below, by posting location. Calculated base prices for B5, B10, and B20 Biodiesel are also shown below.

Posting Location	KEROSENE (1D)	ULS DIESEL (2D)	B5	B10	B20
Albany, NY	\$1.4958	\$1.2925	\$1.3413	\$1.3903	\$1.4882
Buffalo, NY	\$1.6930	\$1.3200	\$1.3675	\$1.4151	\$1.5102
Long Island, NY	N/A	\$1.2804	\$1.3298	\$1.3794	\$1.4785
Newark, NJ	\$1.5440	N/A	N/A	N/A	N/A
Newburgh, NY	\$1.5400	\$1.2925	\$1.3413	\$1.3903	\$1.4882
Syracuse, NY	\$1.7108	\$1.3210	\$1.3684	\$1.4160	\$1.5110
Utica, NY	\$1.7072	\$1.3225	\$1.3698	\$1.4173	\$1.5122

Should the weekly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide petroleum prices, the State reserves the right to increase the frequency of the price revisions to a daily basis. The daily basis will utilize postings Monday through Friday with applicable price changes to be effective as of the start of business on the following day. Weekend prices will be based on Friday's posting. The Friday posting will also stay in effect on Monday holidays. Prices in effect for mid-week or Friday holidays will be the same as for the preceding day. Also, refer to "NOTE" concerning "Posting Day" below.

Should postings differ from current description and/or format, a posting determined, by the Commissioner, in his or her sole discretion, to be most reflective of market conditions will be used. The same applies if OGS were to utilize a weekly pricing schedule. Corrections to prices previously posted in the OPIS Oil Price Daily will be considered only when caused by a typographical or clerical error on the part of said service provider.

NOTE: In the event a specified Rack low price is not posted on a Thursday, then a price posted on a previous business day in which a posted price is available in OPIS's publication will be utilized. In the event Thursday (the day Oil Price Daily posted prices are used for price adjustments) falls as a Holiday, the State will utilize the previous business day's OPIS publication for posted prices for the weekly period.

Price increases are limited to changes in the OPIS Posting Location as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period.

Price adjustments will continue using the same method if the Contract is extended.

6.5.1 Price Revisions for Biodiesel

The price revision procedure for 1D to be used for winter mixes with B5 Biodiesel, B10 Biodiesel and B20 Biodiesel shall be the same as described above in "Price Revisions" and "NOTE". The price revision procedure for B5, B10 and B20 Biodiesel will be as follows:

The B5 Biodiesel pricing shall be based on 95% of the low posted price for low sulfur diesel (as described above) plus 5% of the soybean oil price based on the price of soybean oil per pound as shown in The Wall Street Journal's "Cash Prices - Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

The B10 Biodiesel pricing shall be based on 90% of the low posted price for low sulfur diesel (as described above) plus 10% of the soybean oil price based on the price of soybean oil per pound as shown in The Wall Street Journal's "Cash Prices -Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

The B20 Biodiesel pricing shall be based on 80% of the low posted price for low sulfur diesel (as described above) plus 20% of the soybean oil price based on the price of soybean oil per pound as shown in The Wall Street Journal's "Cash Prices - Fats and Oils" for each **Thursday's Posted Prices**, which is Wednesday's cash price, using a multiplier of 7.6465 to convert to gallons.

Procurement Services will compute any price revisions by determining the difference between the combined posted prices on Thursday, July 30, 2020 and the combined posted prices on every Thursday during the Contract period, beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the contract start date. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted on Thursday, the previous business day on which the specified prices are posted will be utilized.

The following is an example of B5, B10, and B20 Biodiesel Price Revisions utilizing pricing from the Albany OPIS Posting Location. All values will be truncated to four (4) decimal places (dollars per gallon) prior to every operation in calculating the final result. The final result will also be truncated, if necessary, to four (4) decimal places.

B5:

The posted price for Albany on Thursday, July 30, 2020 for soybean oil is \$0.2970/lb. Using the multiplier of 7.6465, the adjusted price per gallon is \$2.2710 for soybean oil. Five percent (5%) of that figure (\$0.1135) plus 95% of the 2D base of \$1.2925 (\$1.2278) yields a July 30, 2020 base price for B5 fuel of \$1.3413 /gal. To arrive at the adjustment for B5 fuel for a future week, subtract the base price for Thursday, July 30, 2020 (\$1.3413/gal) from the current week's price (for example \$2.2185/gal.), which yields a price change of +\$0.8772/gal. for B5 Biodiesel.

B10:

The posted price for Albany on Thursday, July 30, 2020 for soybean oil is \$0.2970/lb. Using the multiplier of 7.6465, the adjusted price per gallon is \$2.2710 for soybean oil. Ten percent (10%) of that figure (\$0.2271) plus 90% of the 2D base of \$1.2925 (\$1.1632) yields a July 30, 2020 base price for B10 fuel of \$1.3903/gal. To arrive at the adjustment for B10 fuel for a future week, subtract the current base price for Thursday, July 30, 2020 (\$1.3903/gal) from the current week's price (for example \$2.2645 /gal.), which yields a price change of +\$0.8742/gal. for B10 Biodiesel.

B20:

The posted price for Albany on Thursday, July 30, 2020 for soybean oil is \$0.2970/lb. Using the multiplier of 7.6465, the adjusted price per gallon is \$2.2710 for soybean oil. Twenty percent (20%) of that figure (\$0.4542) plus 80% of the 2D base of \$1.2925 (\$1.0340) yields a July 30, 2020 base price for B20 fuel of \$1.4882/gal. To arrive at the adjustment for B20 fuel for a future week, subtract the current base price for Thursday, July 30, 2020 (\$1.4882/gal) from the current week's price (for example \$2.3145/gal.), which yields a price change of +\$0.8263/gal. for B20 Biodiesel.

All other terms and conditions stated above in the *Price Adjustments/Revisions* clause and "NOTE" will also apply to the price revisions for Biodiesel.

6.6 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.7 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.

Should the OPIS posting locations used for diesel price adjustments/revisions become unworkable or unavailable, the Commissioner reserves the right to switch to the most appropriate index and/or location, and adjust the base price(s) accordingly. Please refer to clause 6.4, *OPIS Posting*, for additional factors.

6.8 Volume Discounts

A Bidder may provide a Volume Discount within a given County for all individual orders 5,500 gallons or greater in Attachment 1 – Pricing. The Volume Discount will not be used in the evaluation except in cases of a tie Bid. Should two (2) or more Bidders submit identical pricing for an Item, the amount offered as a Volume Discount shall be used as a tie breaker. The vendor offering the Volume Discount that is the most advantageous to the State will be awarded the Item.

Upon Contract award, the Volume Discount bid for a given County shall be applied to the invoice for each individual order placed by an Authorized User in such County which results in a single delivery of 5,500 gallons or greater.

6.9 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).

6.9.1 Purchasing Card Orders

Bidders shall indicate (via Attachment 5 – Bidder Information Questionnaire) if they will accept the New York State Procurement Card. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

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.

6.10 Minimum Order

Minimum delivery shall be 250 gallons at each delivery location (site) as determined by the delivery schedule. Deliveries under 250 gallons are at the Contractor's option, except for tank top-offs for testing.

All deliveries requested by an Authorized User of less than the minimum order size, including tank top-offs for tank testing, shall qualify for contract pricing. In addition, the following tiered schedule of surcharges may be utilized by the Contractor (except for automatic replenishment):

Tank Capacity (in gallons)	Quantity Delivered (in gallons)	Optional Surcharge
500 or more	Under 250 to 150	\$50.00
	Under 150	\$75.00
Less than 500	Under 250 to 150	\$25.00
	Under 150	\$50.00

Upon written direction by OGS, an Authorized User shall have one (1) delivery per tank per contract year for tank top-off testing that is exempt from any minimum order surcharge.

Determination for total gross tank capacity shall include all manifold tanks. All locations granted a request from the Contractor for “automatic replenishment”, per the *Automatic Replenishment* clause of this Solicitation, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on “automatic replenishment”.

6.11 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)
- Customer Delivery Location ID Number as shown on Delivery Schedule (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/Delivery (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>.

In billing for winter mixes, invoices must include current Contract price for each grade, type of mixture furnished and computation of total price. Invoices should be formatted as per the example below:

EXAMPLE - Delivery of 4000 gallons of 2D/1D winter mix at a 1/1 ratio:

2,000 gals. × Adjusted 2D price = total cost of 2D product
+ 2,000 gals. × Adjusted 1D price = total cost of 1D product
Invoice Total (Total cost for delivery)

NOTE: If additives rather than kerosene is used to provide winter protection, the Contractor is allowed to charge market price for the additive, and as with kerosene, list the price as a separate line item on the invoice.

6.12 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. Every bid states what the maximum time a delivery will take from the moment of order, but the time shall never exceed 24 hours. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be a State declared emergency, an after-hours or weekend emergency, or should an agency run out of fuel at any time creating an emergency situation, the Contractor shall be required to provide product within eight (8) to twelve (12) hours of a telephone call from the agency.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, Procurement Services. On occasion, to prevent fuel run outs during storms or other emergency situations, the Contractor must allow Authorized Users the flexibility to manually schedule deliveries to top-off tank inventories. Normal deliveries are considered to take place Monday through Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, or if a run out is imminent before the next normal delivery day. Delivery of fuel should give first priority to "human needs" customers.

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. Per Appendix B, Section 48(a), (d), and (e), the Authorized User shall have the right to purchase sufficient diesel fuel on the open market to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

Authorized Users shall be responsible for ensuring that tanks are accessible to the Contractor. Authorized Users should also make certain 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. The Contractor must state the amount that would be charged for the direct cost of this subsequent delivery attempt, and provide supporting documentation that substantiates the direct cost for the failed delivery at the fault of the Authorized User. The Authorized User must agree in writing to any such costs for subsequent delivery attempts, prior to the Contractor making the subsequent delivery. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

6.13 Automatic Replenishment

Requests for automatic replenishment are preferred in WRITING from an Authorized User, but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User's request for automatic replenishment on any tank with a total gross capacity equal to or greater than 500 gallons. Automatic replenishment for tank capacities less than 500 gallons will be at the Contractor's option and may be subject to a minimum order charge (see *Minimum Order* clause of this Solicitation). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of ULS diesel and biodiesel, and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to insure an adequate supply at all times.

If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User’s tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4) hours, the Authorized User shall have the right to purchase sufficient fuel on the open market from another vendor to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

MINIMUM LEVEL	TOTAL - TANK CAPACITY/GALS
10%	Under 5500
15%	5,500 and over

6.14 Delivery Schedules

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 212, are available as a guide to indicate proposed delivery points and estimated annual quantities. Bidders are advised that these delivery schedules may be revised up to the date of the bid opening to accommodate the addition and/or deletion of delivery points and quantities, and any changes will be posted to the OGS website under Bid Calendar and the Contract Reporter as a Bid Notification Update. Bidders should therefore make note of the revisions. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attachments in this Solicitation, and any updates (if any) are available on the OGS website.

Contractors shall be obligated to deliver under the resulting contract to any State agency which places a purchase order (or other ordering mechanism between the Contractor and ordering entity) under said contract, whether or not such delivery location is identified in the delivery schedules. Any political subdivision or other non-State entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to receive deliveries at Contractor's option. This will be done upon placement of a valid purchase order (or other ordering mechanism between the Contractor and ordering entity) to the Contractor's address as indicated in the contract award notification. Contractors must notify OGS Procurement Services of any new business created from Authorized Users’ requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules, to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made. See the *New Accounts* clause of this Solicitation.

At any time during the contract, Contractors may be advised in writing by OGS regarding political subdivisions or other Non-State entities which have filed on a timely basis but do not appear, through no fault of their own, on the delivery schedule.

Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension.

NOTE: On occasion, entities may appear on the wrong delivery schedule as entities self-report. For example, a non- State entity may appear on the Agency schedule on occasion or vice versa. OGS does review and seek clarification of information on the delivery schedules, but does not catch all errors.

6.15 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within guaranteed delivery times (regular or emergency as applicable) of written notification to the Contractor of the Authorized User’s intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined

not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

6.16 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

6.17 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.

6.18 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/>.

6.19 N.Y. State Finance Law § 139-I

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 2 – NYS Required Certifications, which Bidder must submit with its bid.

6.20 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 4 – *Insurance Requirements*.

6.21 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 15th for sales July 1st through December and due July 15th for sales January 1st through June 30th). 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 semi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), 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 8 – *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.

6.22 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 (“MWBs”) 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. 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 10-20% for MWBE participation for the 22 counties referenced in the table below, 0-10% for Minority-Owned Business Enterprises (“MBE”) participation and 0-10% 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.

COUNTY	OVERALL GOAL	MBE	WBE
Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester	20%	10%	10%
Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schenectady, Schoharie, Wayne, Wyoming	10%	0%	10%
Orange, Putnam	10%	10%	0%

- 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, 29th 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>

6.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.24 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*.

6.25 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.

6.26 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.

6.27 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.

6.28 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.

6.29 Guarantee

The Contractor guarantees to furnish adequate protection from damage to Authorized User's buildings, grounds and/or equipment occurring on account of or in connection with, or occasioned by, or resulting from the furnishing and delivering of fuel under the resultant Contract and shall be liable for any damages for which he or his employees are responsible.

This liability includes but is not limited to oil spills occurring during delivery. The Contractor shall provide constant surveillance during delivery by having a person in attendance at all times at the point of transfer. Oil spills of any size shall be immediately reported to the agency Business Office to effect contact with a representative of the Department of Environmental Conservation. More information can be viewed at: <http://www.dec.ny.gov/chemical/8428.html>

A call can be placed twenty-four (24) hours a day with the New York State Oil Spill Hotline at 1-800-457-7362.

6.30 Engineering Service

Contractor must be prepared at all times to furnish engineering service when so requested and/or to investigate a complaint and report to the Authorized User and OGS on any complaint that might arise in connection with the use of Contractor's fuel in State equipment. This engineering service will include but not be limited to the diagnosis of fuel related engine problems in the Authorized User's equipment utilizing the Contractor's fuel.

6.31 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.

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.

6.32 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 can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf 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.

6.33 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.

6.34 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.

6.35 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.

Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made.

6.36 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. 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. 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*.

6.37 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.